

Klaas Dykmann
**Philanthropic Endeavors
or the Exploitation of an Ideal?**



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The Human Rights Policy of the
Organization of American States in Latin America
(1970-1991)

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Index

I.	Introduction.....	p. 9
II.	The Institutional Evolution of the Inter-American System of Human Rights	p. 43
II. 1.	The Development of the Juridical Position of Human Rights in the Inter-American System	p. 44
II. 2.	An Institution for the Protection of Human Rights: The Inter-American Commission on Human Rights.....	p. 66
II. 3.	From an Exclusively Juridical Organ to a Highly Political Institution: The Positions and Activities of the IACHR	p. 105
II. 4.	The 'Conscience of the Hemisphere' Versus the Unconscious: The Relations Between the IACHR, the OAS Organs, and the Member States.....	p. 141
III.	The OAS Human Rights Policy in the 1970s: Between Dictatorships, Violence, and Hemisphere Policies	p. 181
III. 1.	The Human Rights Issue Enters the OAS Agenda: The Chilean Case (1973-1976)	p. 189
III. 2.	The Carter Administration and the OAS Human Rights Policy	p. 222
III. 3.	The Carter Administration, Argentina, and the OAS (1977-1980).....	p. 267
IV.	Political Conflicts and Civil Wars in Central America.....	p. 313
IV. 1.	Redefining Human Rights: The Reagan Administration.....	p. 314
IV. 2.	The Inter-American Commission on Human Rights and Central America during the 1980s.....	p. 344
IV. 3.	The Commission's <i>Realpolitik</i> : The Case of El Salvador (1980-1991).....	p. 391
V.	Philanthropic Endeavors or the Exploitation of an Ideal? An Evaluation of the Human Rights Policy of the Organization of American States	p. 425
VI.	Bibliography, Sources, and Newspapers.....	p. 439
VII.	Appendices.....	p. 481

I. Introduction

On the eve of the 21st century, human rights became a crucial element in foreign policy and scientific research. This was directly related to the increased media attention on atrocities committed by State agents in different countries such as Rwanda, Yugoslavia, Chile, or Cambodia. Symbolic figures such as former dictators Pinochet, Pol Pot and Milošević attracted international public attention to large-scale human rights violations. In 1998, the detention of General Pinochet in London fostered the discussion of the human rights topic in Latin America. However, within the struggle against international terrorism in the aftermath of the terrorist attacks in the US in 2001, the significance of human rights has been fundamentally questioned in international politics. In this context, the present study intends to reconstruct the human rights policy of an intergovernmental body, the Organization of American States (OAS), during the most horrific period of recent Latin American history in regards to human rights.

After World War II, human rights gained importance as a result of the experiences of war and above all in light of Hitler's genocide carried out by the German National Socialists.¹ As a result, the post-war Nuremberg trials against war criminals set a precedent by including the offense of "crimes against humanity." This inclusion constituted a milestone in international law concerning human rights and also influenced the emerging human rights systems. While human rights had developed into an important basis for the current condition of nations in the Western Hemisphere during the last 200 years, those rights were formalized for the first time in the Charter of the United Nations in 1948. The Universal Declaration of Human Rights was adopted the same year. Based on the natural right philosophy from the Middle Ages, authors such as Thomas Hobbes, John Locke, and Jacques Rousseau articulated these rights, which constituted the legal foundation of Western society. From the enlightened natural right theory of the 18th century, human rights were regarded as natural, derived from

1 See Thomas Buergenthal – International Human Rights: Past and Future, Failures and Accomplishments, in: David A. Johnson (Ed.) – Internationalizing Human Rights and Humanizing International Law: Domestic Issues and Global Perspectives, Buffalo, NY 1990, pp. 3-4.

the human dignity of mankind, inalienable and imprescriptible rights of the individual, and not dependent on State recognition.²

In addition to these general foundations mentioned above, several international and regional organizations set a commonly accepted series of norms, which the signatory States in general terms adopted to organize their human rights policy. In the beginning, the rise of the East-West conflict between the victorious countries of World War II overshadowed these declarations, which were downgraded to series of principles of secondary importance. The Western States – above all the United States and Western Europe – dedicated themselves to market economy and to a democratic basis order. In contrast, the Eastern bloc that emerged around the Soviet Union was based on a Socialist economic and social system. A conceptual antagonism arose between individual rights, favored by the Western democracies, and collective rights highlighted in Socialist Eastern Europe.

Within the United Nations, a classification into generations gradually emerged. At the end of the 20th century it was common to distinguish the following three categories of human rights: The first generation of civil and political rights, which guaranteed the individual rights of the person (right to life, freedom, personal security, freedom of belief and religion, equality before the law etc.) and political participation (right to vote and eligibility). The latter clearly hints at the supposed close relationship between human rights and representative democracy, and thus indirectly with a free market economy. The second generation refers to social, economic and cultural rights, which represent a commitment to ensure collective welfare particularly in regard to socioeconomic matters (for example the right to work and social security). The third generation of human rights stresses the right

2 See Alfredo Vázquez Carrizosa – Los derechos como normas universales “*Juris Gentium*”, in: Organización de Estados Americanos (Ed.) – Derechos Humanos en las Américas, Direitos Humanos nas Américas, Human Rights in the Americas, Homage to the Memory of Carlos A. Dunshee de Abranches, Washington, D.C. 1984, pp. 2-6. Also protagonists of Spanish origin contributed to the human rights idea, for instance Francisco de Vitoria, Fernando Vázquez or Fray Bartolomé de las Casas. See Fernando Murillo Rubiera – *América y la dignidad del hombre*, Madrid 1992; Mauricio Beuchot – *Los fundamentos de los derechos humanos en Bartolomé de las Casas*, Barcelona 1994. There are also older sources of the church, which refer to such rights. See James Muldoon – *The Americas in the Spanish World Order. The Justification for Conquest in the Seventeenth Century*, Philadelphia 1994, pp. 78-95.

to solidarity and self-determination of peoples as well as the rights to development and environment. The latter generation also evolved from the requests for development and the failed discussion on a New International Economic Order during the sixties and seventies.³ Mainly despots of the Third World used the right to development as an argument to counter foreign accusations of human rights violations of the first generation.

In a similar manner, the Western capitalist world and the Socialist Eastern bloc did not only differ in their opinions regarding social systems and economic models, but also in relation to the interpretation of human rights. The two International Rights Covenants of the UN, adopted in 1966, contain the categories of the first two generations. Those international conventions also document the distinctive conceptions of human rights in East and West. In the course of the East-West conflict, a dispute on the comprehension of human rights arose: While the Western democracies upheld the traditional individual rights as their ideal, the States of the Socialist Eastern bloc referred to the human rights of the so-called second generation, which includes social, economic and cultural rights.⁴ The *droits libérés*, the rights of the individual against the State, constitute the classical human rights. While the rights to life, to personal security, and freedom belong to the basic human rights of the first generation, socioeconomic human rights are considered to be part of Socialist thought. Socioeconomic human rights extend the individual rights to defend the person against the State to rights that direct demands to the State. For example, the right to life converted into the right to an existence minimum and the right to freedom of opinion was re-interpreted as the right to education.

In regards to the social and economic situation, the second generation of social, economic and cultural rights appears to be important particularly in the case of Latin America. From this, the question arises as to what extent the battle between protagonists of the individual and the collective rights also took place within the frame of the OAS and in the context of Latin America. From a broader perspective

3 Gerhard Stuby – Universalismus versus Partikularismus, Die Menschenrechte der dritten Generation, in: Aus Politik und Zeitgeschichte, Beilage zur Wochenzeitung Das Parlament, B 46-47/98, November 6, 1998, p. 33.

4 For the first time, these rights were formulated in the so-called “Mexican Revolution” (since 1910/11) as well as in the Russian Revolution of 1917.

the question remains as to whether the realization of the social and economic rights in Latin America actually is a necessary precondition to guarantee individual rights. Merely the questioning of the priority of individual rights just a few years before would have been confronted with the accusation of sympathy with Communist thoughts, while the insistence on the pre-eminence of the rights of the person now has been challenged by protagonists of the so-called cultural relativism. From a simplified view, cultural relativism regards the persistence on the Western Christian human rights of the individual as Eurocentrism, which is not applicable to the problems and cultures of developing countries. However, besides Europe and North America, Latin America has typically been classified as a region in whose cultural self-comprehension of human rights has roots of Western origin, unlike other developing regions in Africa or Asia. Therefore, the argument of different traditional patterns used by the cultural relativism plays a less important role in Latin America – it concerns more a question of priority between civil and political rights and economic, social and cultural rights. Furthermore, although many treaties attempted to fix the interdependence and ties of the two first generations⁵ of human rights, the concrete human rights policy has always remained determined by matters of precedence.

In the course of the reorganization of the post-war world, and also as a consequence of the beginning East-West conflict, twenty Latin American States and the United States created the Organization of American States (OAS) in 1948.⁶ While the creation of the OAS did not mark the first attempt at inter-American cooperation, it is certain that the creation of the OAS gave a new quality to inter-American relations. Since 1889/1890 there had been Inter-American Conferences, which since 1910 had been organized by the Pan-American Union (PAU). The establishment of Pan American relations meant a decisive shift from Bolivarism that favored a Latin American political community⁷ toward a North-South American cooperation.

5 The American Declaration of Rights and Duties of Man and the American Convention on Human Rights undertake an attempt to establish such interdependence between both rights generations.

6 José Luis Ramírez León – La OEA, los países latinoamericanos y la democracia en el hemisferio, in: *Síntesis*, Madrid, No. 21, Julio-Diciembre 1993, p. 194.

7 In fact, the author prefers to interpret “Bolivarism” as many Latin American scholars do: the quest for a pan-Latin American nation. This differs from the cur-

During the late 19th century, a type of antagonism developed between virtual “bolivarismo” and Pan Americanism. While the former favored a Latin American solidarity and a reliance on Great Britain as a guarantee power and was mostly directed against the omnipotent US, the hemispheric approach of Pan Americanism theoretically sought to integrate North and South America and supported US-Latin American trade relations as its initial main goal.⁸ It will be of interest to keep in mind this broad perspective of the contrasting concepts of Latin American unity and the inter-American system, respectively.

The binding Charter of the Organization of American States marked a historical step towards the institutionalization of inter-American affairs.⁹ In addition, the character of the Pan American relations that initially focused on trade issues was extended to political and military spheres. The decision to name it an “Organization” rather than a “Union” was made by an eleven-to-ten vote, and was derived from the conviction that the latter would suggest too much a sort of “superstate”. In contrast, alternative notions such as “Association” or “Society” were considered as too weak.¹⁰

The new inter-American system was based on the OAS Charter in addition to a military pact adopted in 1947. This pact, the Treaty of Reciprocal Military Assistance (Treaty of Rio) preceded the creation of the OAS and was motivated by security policy concerns.¹¹ This

rent that views Bolívar as the father of Pan Americanism since by some he is considered to have favored also the participation of the US. See John Edwin Fagg – Pan Americanism, Malabar, Florida 1982, pp. 12; 127-129.

8 See O. Carlos Stoetzer – The Organization of American States, Westport, Connecticut/London 1993, 2nd edition (1st edition 1969), pp. 6-15.

9 Here, the author somewhat disagrees with the expert on OAS history, O. Carlos Stoetzer, who describes the creation of the OAS rather as a codification of the already existing principles and institutions. See Stoetzer, pp. 29-31. Grossman calls the Pact of Bogotá the “coronation” of Pan-American procedures since the First Inter-American Conference in 1889/1890. Claudio Grossman – Het beginsel van non-interventie in de Organisatie van Amerikaanse Staten vanuit een Latijns-Amerikaans gezichtspunt, Dissertation, Amsterdam 1980, p. 127. In this regard, see: David Sheinin – Rethinking Pan Americanism: An Introduction, in: David Sheinin (Ed.)– Pan Americanism in Inter-American Affairs, Westport/London 2000, p. 3.

10 Fagg, p. 78.

11 The Treaty of 1947 later became the model for the North-Atlantic Treaty Organization (NATO). Stoetzer, p. 29. Nevertheless, the Treaty of Reciprocal Assistance also referred to human rights in the “considering”-part. Hernán Monteale-

security element indicates that the goals of the OAS were also related to security politics in the Americas. In fact, US scholars have prevailed in terms of research on the organization. The OAS, as a sort of hemispheric complement at the North-South level to the transatlantic alliance between the United States and the Western democratic States of Europe, can be interpreted as a supplementary element to US security endeavors within the arising East-West confrontation. Besides the transatlantic defense pact institutionalized in the North Atlantic Treaty Organization (NATO), the United States sought to tie its southern neighbors to them as well.¹² So, the OAS primarily presented an inter-American instrument for the US to react to expanding Socialism and through which the influence of the USSR in developing Latin American countries could be contained. Correspondingly, Cuba's *máximo líder* Fidel Castro described the OAS depreciatorily as the "Colonial Office" of the United States.¹³ Farer portrays the OAS as a "gentlemen's anti-Communist club"¹⁴ and Booth calls it a "vehicle for containing communism".¹⁵ Further, Drekonja-Kornat considers the creation of the OAS as the inclusion of Latin America as a subsystem into the imperial order of the United States.¹⁶ Sheinin provides a more moderate, but thanks to its irony, a fairly matching characterization of

gre – Cuatro perspectivas de los derechos humanos en el sistema interamericano, in: Organización de Estados Americanos (Ed.) – Derechos Humanos en las Américas, Direitos Humanos nas Américas, Human Rights in the Americas, Homage to the Memory of Carlos A. Dunshee de Abranches, Washington, D.C. 1984, p. 56.

12 On April 4, 1949, the NATO treaty was signed in Washington, D.C. The fact that many international organizations took their headquarters in the US capital also demonstrates the power relations of the post-war era. Other institutions located in Washington – like the World Bank, the International Monetary Fund or the Inter-American Development Bank (founded in 1959) – can be added. However, the OAS could take over the offices of the Pan American Union that already existed in Washington.

13 See Yuri Gvozdev – Under the Cover of "Inter-American Solidarity", Moscow 1983, p. 20.

14 Tom J. Farer – The Grand Strategy of the United States in Latin America, New Brunswick 1988, p. 92.

15 Booth refers to the anti-Communist declaration adopted by the 1954 OAS meeting in Caracas. John A. Booth – U.S. Influence in Central America, in: Robert E. Biles (Ed.) – Inter-American Relations. The Latin American Perspective, Boulder/London 1988, p. 28.

16 Gerhard Drekonja-Kornat – Grundmuster lateinamerikanischer Außenpolitik, Vienna 1986, p. 9.

the Pan American idea manifested in the OAS: “Pan Americanism has always been U.S. led, the friendly face of U.S. dominance in the hemisphere.”¹⁷

Considering these critical perspectives, the fact that Latin American countries agreed on participating in this system might initially appear surprising, especially when the history of inter-American affairs is taken into account. Since the end of the 19th century, inter-American relations – in this case specifically the relationship between the US and Latin America – had been determined by economic, political and military interventions of the US in Latin American countries.¹⁸ The best example of this is the famous Monroe Doctrine of 1823. Such US doctrine was officially directed against European interference in the hemisphere – but there are clues to conclude that it was in fact aimed at Russia – and was later notoriously misinterpreted as the fundamental document of beginning US imperialism in Latin America. Following the Monroe Doctrine there was, among other events, the Platt Amendment (after the US-Spanish war on Cuba in 1898), the Roosevelt Corollary (1904/1905) and Dollar Diplomacy under US president William H. Taft (1909-1913). Each of these caused angry reactions in Latin America, as the policies focused on the US right to intervention and financial control in the region. Consequently, the so-called Calvo and Drago Doctrines emerged in Latin America, which forcefully defended national sovereignty and targeted interventions in domestic affairs.

From this historical perspective, it appears that Latin American countries developed a deep distrust towards their too-powerful northern neighbor. As a result of this special relation, a greater determination evolved within Latin American nations to stick to the nonintervention principle in order to contain the influence of the US.¹⁹ On the

17 David Sheinin – Rethinking Pan Americanism: An Introduction, in: David Sheinin (Ed.), p. 1.

18 Kryzaneck provides an introductory and bibliographic overview over the development of US interventionism in the region. Michael J. Kryzaneck – Intervention and Interventionism, in: David W. Dent (Ed.) – U.S.-Latin American Policymaking. A Reference Handbook, Westport/London 1995, pp. 397-423.

19 “From a historical perspective, the recognition of the nonintervention principle by the United States was the precondition or equivalent for the Latin American agreement to security policy and ideological cooperation.” Walther L. Berner/Hans Werner Tobler – Staat, Wirtschaft und Außenbeziehungen Lateinamerikas im 20. Jahrhundert, in: Handbuch der Geschichte Lateinamerikas, edi-

other hand, the unfortunate experience of Latin American efforts to align with the United States in the unsuccessful League of Nations also contributed to the general atmosphere under which the foundation of the OAS took place. Latin America found itself in an awkward position with the political and economic superpower of the United States, since post-war Europe was gathering more US attention than any other region at that time. Consequently, the Latin American governments sought an inter-American alliance to outline economic support from the US to Latin America.²⁰ Yet, as in 1947 when the States were only able to agree on an inter-American defense pact, the foundation of the OAS a year later was based on the US desire for an inter-American organization for collective security. The Latin American countries agreed to create the OAS as an “anti-Communist instrument”²¹ because the US accepted the nonintervention principle and the Southern States were eager for the US promise to provide economic assistance.²²

ted by Walther L. Bernecker/Raymond T. Buve/John R. Fisher/Horst Pietschmann/Hans Werner Tobler, Volume 3: Lateinamerika im 20. Jahrhundert, edited by Hans Werner Tobler/Walther L. Bernecker, Stuttgart 1996, p. 119 (Translation by the author). Former Commission member Claudio Grossman provided a far-reaching history of law on the nonintervention principle and the OAS with his dissertation prepared during his exile in the Netherlands: Claudio Grossman – Het beginsel van non-interventie in de Organisatie van Amerikaanse Staten vanuit een Latijns-Amerikaans gezichtspunt, Diss., Amsterdam 1980.

- 20 After World War II, Latin American nations still assembled a community of countries predominantly shaped by the production and export of raw material. Hence, an organization with the United States also promised to advance a possible Latin American access to the highly lucrative US markets.
- 21 In 1953, a US National Security Council report called for a “...greater utilization of the Organization of American States as a means of achieving our objectives, which will avoid the appearance of unilateral action and identify our interests with those of other American states.” Doubtless, the US invasion in the Dominican Republic in 1965, later on declared as an OAS operation, qualified as such a “utilization”. A Report to the National Security Council, by the Executive Secretary on: United States Objectives And Courses Of Action With Respect To Latin America, Top Secret, Washington, D.C., March 4, 1953, p. 3 (National Security Archives, NSA files).
- 22 US willingness to accept the nonintervention principle legally traced back to the Seventh International Conference of American States that took place in Montevideo in 1933. Stoetzer, p. 21. Further, the Latin American emphasis on nonintervention could also be explained by the information that leaked in 1944 concerning an intervening competence of the forthcoming UN Security Council. Ibid., p. 25.

These quid-pro-quo elements²³ of the OAS – US anti-Communism,²⁴ US economic assistance and the nonintervention principle for Latin America, respectively – should not be underestimated as factors of the organization's human rights policy.²⁵

After the adoption of the Treaty of Rio in 1947, the Charter of the Organization of American States was signed in 1948 at the Ninth International Conference of American States in Bogotá. The OAS Charter, or the Pact of Bogotá, which entered into force in 1951, was amended four times until the early 1990s. The Charter's amendments were the result of a perceived weakness of the OAS structure and of its articulation in regard to the fundamental principles of the organization: regional solidarity, collective security, nonintervention, as well as democracy and human rights.²⁶ Regarding the principles of nonintervention and human rights, it is fair to expect a conflict of objectives. Article 18 of the amended Charter of 1967 (Article 15 of the original Charter) states: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any form of interference or attempted threat against the personality of the State or against its politi-

23 See: Viron P. Vaky – The Organization of American States and Multilateralism in the Americas, in: Viron P. Vaky/Heraldo Muñoz – The Future of the Organization of American States, New York 1993, pp. 9/10.

24 Ronald F. Docksai writes that the OAS Declaration of Caracas in 1954, which excluded Communist interference in the continent, constituted the multinationalization of the Monroe doctrine and the compatibilization with the OAS. Gregorio Selser – El Documento de Santa Fé, Reagan y los derechos humanos, Mexico City 1988, p. 32 (Introduction by Ronald F. Docksai).

25 According to Brock, the economic factor was the most important aspect of the US strategy that led to the creation of the OAS. He stressed that the US did not want an economic cooperation but the securing and the institutionalization of its economic dominance in Latin America. Naturally, the economic component cannot be left out, but in general, the author tends to prioritize security policy factors leading to the creation of the OAS. Lothar Brock – Entwicklungsnationalismus und Kompradorenpolitik, Die Gründung der OAS und die Entwicklung der Abhängigkeit Lateinamerikas von den USA, Dissertation, Meisenheim am Glan 1975, pp. 119/120. However, it is fair to look at the scientific *zeitgeist*: During the 1970s, theories based on economic imperialism were *en vogue*.

26 The human rights issue had come up before: In 1936, at the Inter-American Conference for the Consolidation of Peace in Buenos Aires, and at the Eighth International Conference of American States in Lima (1938). Stoetzer, p. 244.

cal, economic and social events.” During the first decades, the OAS scrupulously focused more on the nonintervention principle, but since the creation of the Inter-American Commission on Human Rights in 1959, this principle has been continuously challenged, though it often served as an argument for repressive regimes.

In 1965, at the OAS Special Conference in Rio de Janeiro, the Member States, following US president John F. Kennedy’s Alliance for Progress, sought to focus on social and economic development in the region. One of the main objectives of such a program was the containment of the emerging Communism. In 1967, the Third Inter-American Special Conference in Buenos Aires adopted a structural reform of the organization in the Protocol of Buenos Aires. This protocol entered into force in 1970, and to the present day still determines the organizational structure of the OAS to a great degree. In this protocol, the General Assembly replaced the Inter-American Conference as the plenary organ of the OAS. Likewise, three councils with far-reaching executive duties were created: the Permanent Council, the Inter-American Council for Social and Economic Affairs, and the Inter-American Council for Education, Science and Culture. In 1985, the second large-scale reform took place at the Special Meeting of the General Assembly in Cartagena de Indias, Colombia. The adoption of that amendment occurred during a time of notable political development shaped by the beginning of the re-democratization process, especially in several key South American nations. The Protocol of Cartagena de Indias integrated and more specifically, strengthened the concepts of nonintervention and representative democracy as essential goals of the OAS (Article 2 of the amended Charter). In 1991, the General Assembly in Santiago de Chile limited the nonintervention principle by prioritizing democratic values and a year later, the Protocol of Washington was approved, which reiterated the organization’s commitment towards representative democracy.²⁷

Since the entry-into-force of the Protocol of Buenos Aires of 1967, the Organization of American States has been divided into the organizational structure included in the appendices. This structure, according to article 53 of the Charter, mandates that the *General Assembly* as plenary organ constitutes the “highest organ of the OAS”. Representa-

27 Scott Davidson – The Inter-American Human Rights System, Aldershot (England)/Brookfield (US) 1997, pp. 2.

tives from all Member States compose the Assembly, which possesses an extraordinarily broad mandate to observe the activities of the organization. The General Assembly meets once a year for a short time. A Special Meeting can be convened by a two-third majority of the Member States, if the circumstances are necessary. In reference to article 53 a) of the Charter that awards decisions on general actions and politics of the OAS to the General Assembly²⁸, Davidson finds that the competence of the highest OAS organ in the field of human rights appears to be “all-embracing”.²⁹ The *Meeting of Consultation of Foreign Ministers* was created to enable short-term meetings if problems of urgent nature and of common interest of the American States arise. The Permanent Council can also convene such a Meeting of Consultation by request of some Member States.³⁰ Among the three councils of the OAS, the *Permanent Council* is the one which executes the most important functions. Though the Permanent Council is subordinated to the General Assembly and the Meeting of Consultation of Foreign Ministers, it nevertheless constitutes a high-ranking organ composed by persons with diplomatic status, and which is responsible for preparing the meetings of the General Assembly. This organ also works as the executive organ of the General Assembly and the Meeting of Consultation regarding the implementation of their decisions.³¹ At first sight, the *Inter-American Economic and Social Council* might not appear to be an organ that deals with human rights, but the OAS Charter, the American Human Rights Declaration, the American Convention on Human Rights and its Additional Protocol on Economic, Social and Cultural Rights do refer directly and indirectly to economic, social and cultural rights as “enforceable human rights”.³² The *Inter-American Council for Education, Science and Culture* also is a high-ranking representative organ of the OAS. Its task is not only to promote friendly relations and mutual understand-

28 Furthermore, the General Assembly has the power to determine the structure and functions of the OAS and to consider each matter, which corresponds to the friendly relations between the American States. Thomas Buergenthal/Richard E. Norris – The Inter-American System, Binder 1, Booklet 2 (7/89), The Charter of the OAS, p. 21.

29 Davidson, p. 5.

30 Buergenthal/Norris, p. 23 (Articles 60, 61 and 64 of the OAS Charter).

31 Davidson, pp. 5/6.

32 Ibid., p. 6.

ing among all peoples in the Americas, but also to pursue the goal to broaden the cultural awareness of the people in the Americas and to affirm the dignity of the individual. Further, this council shall prepare the peoples of the Americas for the tasks of progress and strengthen their dedication to democracy, peace and social justice. Here, it becomes evident that the activities of the Council are closely linked to the broad field of human rights – from the civil and political to the economic, social and cultural rights.³³

Through the entry-into-force of the Protocol of Buenos Aires in 1970, the *Inter-American Commission on Human Rights* (IACHR) was elevated from an “autonomous entity” to a main organ of the organization. As a result of this, it was established that main functions of the IACHR were to be the promotion, observance and protection of human rights. Furthermore, the Commission is designed to serve as a consultative organ to the OAS in related matters. The IACHR has also represented an organ of the Convention as a result of the entry-into-force of the American Convention on Human Rights in 1978/1979. The *General Secretariat* is a central and permanent organ with seat in Washington, D.C. The Secretary General who is elected for a period of five years presides over the Secretariat. He can be re-elected once and has the competence to attend all meetings of the OAS but doesn’t possess the right to vote. However, his position is not equal to that of the post of the UN Secretary General.³⁴ The *Special Organs* of the Organization of American States constitute intergovernmental entities created by multilateral treaties that were incorporated into the frame of the OAS by article 130 of the Charter. Those organs deal with technical matters of common interest. The organizations, which have a direct relation to the OAS, are the following: the *Inter-American Commission of Women*, the *Inter-American Institute of Children*, the *Inter-American Institute for Indigenous People*, the *Pan-American Institute for Geography and History*, the *Inter-American Institute for Agricultural Sciences*, the *Pan-American Health Organization* and the *Pan-American Office of Sanitary*. It is of interest for the human rights subject that in a broader sense these institutions have been incorporated into the OAS structure as organs of the organization.

33 Ibid.

34 Stoetzer, pp. 76/77.

In order to be able to understand the relationship between claims made by States and the reality of the protection of human rights in Latin America, it is necessary to first consider what is understood to be the State in Latin America and what its impact has been on human rights. In North America, the democratic structure of the British colonies led to the development of independence. The colonies began an autonomous life: A self-administration came into being; self-governance structures arose as well as an independent jurisdiction. One could speak of a taking-over of the human rights ideal with the fight for independence.³⁵ The Declaration of Independence of the United States of America, proclaimed on July 4, 1776³⁶, required inalienable rights like the right to life, freedom and prosperity.³⁷ This Declaration of Independence formed the fundament for the US Constitution, which represented the sovereignty of individuals and a limitation of the power of the State through a written catalogue of human rights.³⁸

In contrast to the Anglo-Saxon research on the State role, the State in Latin America has been extensively investigated.³⁹ Unfortunately, common research on Latin American history, particularly regarding pre-Colombian societies and the consequences of colonial heritage for Latin America in the 20th century, has often been undertaken by social scientists who frequently failed to employ due empirical methods to support their conclusions. Consequently, their research often ignored a wide range of regional developments present in Latin America. How-

35 Ludger Kühnhardt – Die Universalität der Menschenrechte, Studie zur ideengeschichtlichen Bestimmung eines politischen Schlüsselbegriffs, Munich 1987, pp. 89.

36 The United States Declaration of Independence (1776), in: Walter Laqueur/Barry Rubin (Eds.) – The Human Rights Reader, New York/Ontario, second and revised edition 1989, p. 107.

37 Historians view John Locke's *Second Treatises on Civil Government* (1680) as the intellectual basis of the Declaration. Felix Ermacora, Menschenrechte in der sich wandelnden Welt, Volume III: Amerika, from: Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse, Vol. 608, Veröffentlichungen für das Studium der Menschenrechte, No. 3, Vienna 1994, p. 371.

38 The constitutions of Virginia (1776) and Massachusetts (1780) can be regarded as the first written systematic human rights catalogues. Ermacora, p. 371.

39 In Great Britain and the United States, research on the role of State in society was mostly neglected because of the State's loss of influence after the bourgeois revolution. See: Atilio A. Boron – State, Capitalism, and Democracy in Latin America, Boulder/London 1995, p. 97.

ever, beginning in the 1980s, historians began working intensively on 19th century sources and revising previously held notions. In general, it is important to emphasize that this work does not intend to explore the different currents of the recent debate, but to mention some patterns of the theory on the state, but without extensively referring to the current discourse.⁴⁰

According to a major current of conventional research, the colonization of Latin America resulted in the formation of an authoritarian and hierarchical State based mainly on patterns derived from the Spanish mother country.⁴¹ In independent Latin America, it is argued that these old forms of thought and Catholic-Iberian traditions of behavior prevailed.⁴² Liberal and positivist characteristics formed the

40 For an overview over the recent debate see Horst Pietschmann – Überlegungen zur Staats- und Nationsbildung in der spanischen Welt, ca. 1766-1830. See also Horst Pietschmann – Der Weg Lateinamerikas in die Krise des 20. Jahrhunderts, in: G. Kohlhepp (Ed.) – Lateinamerika, Umwelt und Gesellschaft zwischen Krise und Hoffnung, Tübinger Geographische Studien, Vol. 107, 1991 pp. 3-25; Horst Pietschmann – Kolonialgeschichte und die Ursachen der Unterentwicklung Lateinamerikas, in: Theo Ginsburg/Monika Ostheider (Eds.) – Lateinamerika vor der Entscheidung, Frankfurt/Main 1984, pp. 13-37.

41 In general, despite numerous differences, the area of the subcontinent colonized by the Spaniards possessed several common homogenous attributes: A primarily white elite of Spanish origin, the shared Catholic belief and a three hundred years lasting government and administration by central organs of Spain. Inge Buisson – Probleme der Staatenbildung im spanischen Südamerika (1810-1830), in: Jürgen Elvert/Michael Salewski (Eds.) – Staatenbildung in Übersee, Die Staatenwelt Lateinamerikas und Asiens, from the series: Historische Mitteilungen, Im Auftrage der Ranke-Gesellschaft, Vereinigung für Geschichte im öffentlichen Leben e.V., edited by Michael Salewski and Jürgen Elvert, supplement 2, Stuttgart 1992, p. 11.

42 Ludger Kühnhardt – Stufen der Souveränität, Staatsverständnis und Selbstbestimmung in der „Dritten Welt“, Bonn/Berlin 1992, pp. 128/129, 132/133. Mols observed a *hypostatization of State idea and State claim* in Latin America since the 16th century. Further, he concluded that the Latin American State was not a social creation among social creations but an everything else subordinating agency for the organization of human existence, which was over-exalted into mythical spheres and had a priori competence for everything. Mols, p. 186. Likewise, Norbert Lechner called the dealing with the “over-exalted State” *estadolatría*, a sort of idolatry of the State. Mols explained this phenomenon as a result of the mystification of the State, which had been maintained during the centuries and affected the different political orientations. The Latin American State allegedly was in the beginning a Catholic Leviathan; Marcos Kaplan also described it as *Leviathan criollo*. Manfred Mols, Begriff und Wirklichkeit des Staa-

Latin American thought of the 19th century, although it became one of eclectic nature through European and North American influence. This traditional interpretation focused on the Spanish Empire and a metropolitan perspective is for the most part employed in the political science, and is no longer tenable as a proper or complete explanation for the development of the Latin American State.⁴³ Newer historical research results focus on the role of the antagonism between cities and the newly evolving State in Latin America. Since the 16th century, towns in many parts of Latin America rose up against the colonial as well against the independent capital cities. The cities sought to broaden their influence and to secure sovereignty against the main metropolis, which strove to maintain territorial cohesion by employing etatism. In addition to this internal disagreement, the conflict between centralists and federalists prevalent during the 19th century led to a permanent questioning of the likelihood of constitutional continuity in Latin America.⁴⁴

The original constitutional system of Latin America – with the exception of Marxist-Leninist Cuba – is mainly based on principles similar to the Constitution of the United States: a republican State model, a democratic-parliamentary and presidential system and a single State form of government. The respect of human rights is guaranteed by the constitution although there exists an apparent difference between constitutional guarantees and reality.⁴⁵ During the gradual adaptation of the European-North American State model, much remained façade in

tes in Lateinamerika, in: Akademie für politische Bildung, Zum Staatsverständnis der Gegenwart, Munich 1987, pp. 186/187. Still helpful is Eisenstadt's study: Shmuel Noah Eisenstadt – The Political Systems of Empires, New York 1963.

43 Pietschmann holds that a historian must reject the idea that the current States emerged from the old Spanish Empire in a complicated process during the wars of independence, through the intervention of a sort of “deus ex machina”. Horst Pietschmann – Los principios rectores de Organización Estatal en las Indias, in: De los Imperios a las Naciones: Iberoamérica, edited by Antonio Annino, Luis Castro Leiva, François-Xavier Guerra, Zaragoza 1994, pp. 78, 84. For instance, the Creole elite that led the independent wars also fought inner struggles and competed with each other.

44 See: Ibid.; Horst Pietschmann – Actores locales y power central: La herencia colonial y el caso de México, in: Relaciones, Estudios de Historia y Sociedad 73, Winter 1998, Vol. XIX, pp. 53-83; Ludger Kühnhardt – Stufen der Souveränität, p. 225.

45 See: Ermacora, pp. 118/119. However, the concept of “nation” preceded the emphasis on human rights in Latin American constitutions.

respect to human rights; it merely evolved the appearance of an existing constitutional rule of law.⁴⁶ Correspondingly, several authors accentuate the Spanish heritage as a key factor, which followed the “Mediterranean tendency” to evade from the law while paying lip service to it; a phenomenon that was often referred to as “obedecer sin cumplir” (obeying without complying).⁴⁷

In democratic societies, the monopoly of executive power is usually attributed to the State. However, in Latin America it is necessary to also take into consideration the position of the military. Through their identity-establishing role during the wars of independence, the armed forces generally represented one of the few stable pillars in Latin American societies besides the church and the bureaucracy. Furthermore, the military began a tradition of intervention with its increasing influence during the removal of oligarchic regimes in the

46 Mols, p. 197.

47 Edmund Gaspar – United States-Latin America: A Special Relationship? American Enterprise Institute for Public Policy Research/Hoover Institution of War, Revolution and Peace; AEI-Hoover policy studies 26, Washington, D.C. 1978, p. 10. Margaret Crahan also saw the historical roots as basis for the phenomenon of clientelism and exclusive structures in the Latin America of the twentieth century. Margaret E. Crahan – The State and the Individual in Latin America: An Historical Overview, in: Margaret E. Crahan (Ed.) – Human Rights and Basic Needs in the Americas, Washington, D.C. 1982, pp. 23-45. Likewise, Wiarda stated that the influence of French enlightenment and of Rousseau’s thoughts on the Latin American constitutions resulted in power concentration in the executive and an emphasis on group rights over individual rights. Howard J. Wiarda – The Democratic Revolution in Latin America. History, Politics, and U.S. Policy, New York 1990, pp. 32/33. Accordingly, Horst Pietschmann stressed that the selective implementation of the law in force and the over-accentuation of the juridical position of collective organs towards individual rights was willingly traced back to the Iberian heritage of Latin American States. Horst Pietschmann – Die staatliche Organisation des kolonialen Iberoamerika, Teilveröffentlichung zum Handbuch der lateinamerikanischen Geschichte, Stuttgart 1980, p. 9 (Translated by the author). See also: Horst Pietschmann – Conciencia de identidad, legislación y derecho: algunas notas en torno al surgimiento del “individuo” y la “nación” en el discurso político de la monarquía española durante el siglo XVIII, in: Dulce et decorum est philologiam colere, Festschrift für Dietrich Briesemeister zu seinem 65. Geburtstag, edited by Sybille Große and Axel Schönberger, Berlin 1999, pp. 535-554. Crahan provided another interesting contribution to this topic. See Margaret E. Crahan – The State and the Individual in Latin America: Some Implications for Human Rights, Woodstock Theological Center, Georgetown University, Washington, D.C., October 1979.

1930s and 1940s.⁴⁸ With its professionalization, the armed forces developed an identity of that of a superior guardian of political order in the course of the emerging nationalism of the 20th century.⁴⁹ Accordingly, the military possessed a major influence and intervened numerous times in the political matters of the States, in effect violating the principle of separation of powers and often depriving the State of its monopoly of power.⁵⁰

Similar to the State concept discussed above, *etatism* also played an important role in the 20th century; for example, through the popularity of the theories of dependence during the 1960s and 1970s. The motley collection of theories that fell under the term *dependencia* identified the origins of structural socioeconomic ‘under’-development in Latin America as the result of the conquerors and later representatives of the industrialized countries. These theories undervalued internal factors, and placed the main responsibility on the State for overcoming dependence. According to the structuralist camp, public measures should originate progress in the developing countries through a sort of developmental Keynesianism, using State intervention to stimulate the economy. In the course of the development strategies developed during the post-war era, the approach of the UN Economic Commission for Latin America (CEPAL) also regarded the State as the decisive actor able to initiate progress. Notwithstanding, this “Cepalismo” failed due to the weakness of the State in Latin America. The failure of these development policies was also a result of the persisting antagonism between city and State, since the centralized State did not effectively carry out a decentralized development policy. On the one hand, it was only the centralized State that had the ability to mobilize resources for development. However, these resources were

48 Bernecker/Tobler, p. 65.

49 Horst Pietschmann – Der Weg Lateinamerikas in die Krise des 20. Jahrhunderts, pp. 17/18.

50 Peter Waldmann – Nachahmung mit begrenztem Erfolg. Zur Transformation des europäischen Staatsmodells in Lateinamerika, in: Wolfgang Höpken/Michael Riekenberg (Eds.) – Politische und ethnische Gewalt in Südosteuropa und Lateinamerika, Cologne/Weimar/Vienna 2001, pp. 19/20. Under the so-called Doctrine of National Security, from a geopolitical perspective the State was regarded as a “living organism” whose interests and goals were above those of its citizens. Nikolaus Werz – Die ideologischen Wurzeln der “Doktrin der nationalen Sicherheit” in Lateinameirka, in: Hans Werner Tobler/Peter Waldmann (Eds.) – Staatliche und parastaatliche Gewalt in Lateinamerika, Frankfurt/Main 1991, p. 177.

used to exacerbate the conflict and further enabled the national elites to control their resources in the countryside.

Frequently, this conflict was interrupted by interventions of the military. As the only authentic socially permeable institution and simultaneously mechanized and supported through external forces and the central State, the armed forces saw themselves as guardians of the nation. As the only institution with nationwide influence, the military frequently took power from local or regional interests and with the support of national elites. According to its 'national mission', the military also justified its use of brute force since opposition was interpreted as chaos and the dominance of regional interests. Interestingly enough, during the 19th century the human rights situation in Latin America appeared to be healthier than that in the 20th century.

Mols insists on considering the development background and the international context when discussing the role of the State in Latin America.⁵¹ Likewise, Ermacora seeks the reasons for human rights violations committed by the State in the wealth and land distribution in Latin America. It is important to take economic data into account, including questions of distribution and general economic systems, to understand the gap between the realization and reality of human rights.⁵² Frequently, the reason for the discrepancy between constitutional claim and actual respect for human rights in Latin America is explained by the denial of fundamental economic, social and cultural rights to the majority of the population.⁵³ The very reason for massive human rights violations, which affect the main part of the population, is the lack of a real democratic form of State and the huge gap between the ruling class and the ruled people.⁵⁴ Accordingly, human rights are often only valid for a small upper class; the rights of the

51 Mols, p. 209.

52 Ermacora, pp. 192/193.

53 Ermacora, p. 22. "Under the pressure of the proprietors, the State power seeks to maintain the economic conditions and counters those with violence who push for a change of the system. In Latin America, terrorism has sometimes become a system." (Translated by the author), Ermacora, p. 192.

54 Ermacora, p. 192. In contrast, Kriele defends the priority of civil and political rights and is convinced that these rights do not constitute an obstacle for the implementation of economic, social and cultural rights but rather a promotion function for the latter. Martin Kriele – Derechos Humanos y división de poderes, in: Josef Thesing (Ed.) – Estado de Derecho y Democracia, Una Compilación, Konrad-Adenauer-Stiftung/CIEDLA, Buenos Aires 1997, p. 156.

lower classes are usually denied.⁵⁵ As a result, Ermacora speaks of a “negative dialectic of human rights”, which is supported by an etatist political ideology. The primate of the State stands before the primate of the human being. This negative dialectic results in a dramatization by the forces that fight against the existing socioeconomic conditions. Finally, Ermacora admits to a “historical failure of human rights” in Latin America up until the end of the 1980s.⁵⁶

In Latin America, the theoretical discourses on individual rights versus socioeconomic conditions, as mentioned above, had been discussed since the 19th century. They became elements of escalating confrontations since the 1960s – the guerrilla inspired by Marxism-Leninism justified its struggle through the supposed conquest of an extreme social inequality. The often deeply unjust distribution of wealth and land led or contributed to the formation of revolutionary groups that called for armed resistance against the ruling elites. The violence of the guerrillas, which saw the armed resistance as a solution against unjust economic conditions and political repression, however, also resulted in human rights violations. The advent of Marxism-Leninism during the 1960s caused a human rights situation described as a “continuous struggle” (*lotta continua*), especially in the case of Cuba and Nicaragua.⁵⁷ During the 1960s, military strategists of the Brazilian *Escola Superior da Guerra* developed the Doctrine of National Security as a response to the guerrilla threat. Subsequently, this doctrine served as a theoretical justification for numerous military dictatorships in the region. The doctrine constitutes an etatist ideology, which affects the human rights thought. This strategy, outlined by the Brazilian Gilberto Cuoto, regarded order and silence as the first duties of the civilian. If necessary, human rights too were required to be subordinated under this primacy. Accordingly, the Doctrine of National Security led to the declaration of states of emergency and siege and was used as a standardized justification for numerous human

55 Ermacora, p. 362. Interestingly, this statement of the conservative Ermacora matches exactly with the Marxist criticism on the bourgeois human rights concept.

56 Ermacora, pp. 362/363.

57 Ermacora, pp. 225, 194.

rights abuses.⁵⁸ The state of siege often became the “permanent constitutional condition” in Latin America. Though almost all parties paid lip service to human rights – mostly as a result of international pressure – the reality was shockingly different.⁵⁹

Since the establishment of the military regime in Brazil in 1964, the authoritarian ruling system became an attractive alternative for many armed forces in Latin America. The military evaded from constitutional limitations and ascended to a “supreme State institution”. Military regimes in Peru (1968), Ecuador (1972), Chile (1973), Uruguay (1973) and Argentina (1976) all followed the Brazilian example. Central America witnessed a more traditional form of military rule and dictatorship, and then sank into bloody civil wars during the 1980s. The armed conflicts between mainly leftist guerrillas and authoritarian military governments contributed to a spiral of violence and counterviolence.⁶⁰

In the mid- and late-1980s, the majority of Latin American countries returned to democratic rule: Ecuador in 1979, Argentina in 1983, Uruguay in 1984, Brazil in 1985, and Chile in 1990. Likewise, the bloody civil wars in Central America ended in the early 1990s: in 1990, the Sandinistas in Nicaragua handed power over to the conservative opposition after losing the elections; and in 1992, a peace treaty concluded the civil war in El Salvador. In 1996, the civil war parties in Guatemala finally concluded a peace agreement.

In this inquiry, the human rights record of leftist guerrilla movements is not considered, because they rarely evolved into a government; with the well-known exceptions of Cuba (since 1959) and Nicaragua (1979-1990). This limitation of the governmental human rights policy leads to the question of how to deal with the responsibilities of regime enemies: To which extent are guerrilla movements committed to national and international human rights standards and the international humanitarian law? This question is significant because it reveals a gap in the historical research efforts conducted on human rights policy, which have mostly been focused on governmental human rights

58 “In light of this ideology, human rights are applied in a discriminative manner. Only the “good”, which means those loyal to the system, shall enjoy them entirely; the “bad” or the enemies of the system are not allowed to refer to them.” (Translated by the author). Ermacora, pp. 195/196.

59 Ludger Kühnhardt, *Die Universalität der Menschenrechte*, pp. 37/38.

60 Ermacora, pp. 285, 310.

records. The example of the guerrilla of the FMLN in El Salvador illustrates how a rebel organization with Marxist ideology became an international recognized warfare party in the Salvadoran Civil War. The FMLN reached its recognition through the formal acceptance of human rights.⁶¹ In spite of the relevance of this question, it is the human rights policy of the intergovernmental Organization of American States, its Human Rights Commission and the respective Member States that is the exclusive subject of this investigation.⁶² In this respect, nongovernmental human rights organizations in Latin America and the United States are also considered due to their decisive catalyst function since the early 1970s.

Since the early seventies, the emergence of Latin American military dictatorships was accompanied by an increasing interest of international human rights organizations dedicated to publicizing human rights violations in this period.⁶³ The situation in Chile after the coup of 1973 serves as an example of the evolution of human rights groups and their connections. Kathryn Sikkink speaks of a genesis of human rights networks, which evolved as a reaction to the massive abuses of authoritarian regimes.⁶⁴ In regard to the interactions of national and international human rights groups, there has been a significant change during the last three decades. Sikkink divides the development of human rights organizations into three periods: first, the emergence of these groups between 1973 and 1981; then, a phase of consolidation and formation of new groups (ca. 1981-1990) and the last decade of the 1990s. Clearly, Sikkink's division of time periods coincides with the chronology of this work. The period of investigation can be explained by two institutional events in the inter-American system: in 1970, the Protocol of Buenos Aires, which amended the OAS Charter, entered into force and thereby elevated the Inter-American Commis-

61 See Klaas Dykmann, *El Salvador – Die Menschenrechte im Visier*, Hamburg 1999, pp. 10.

62 However, the OAS Human Rights Commission actually dealt with the topic: By a reference to its legal basis, the Statute, the Commission declared itself incompetent to inquire abuses committed by terrorists (see chapter II. 3.).

63 Ermacora, p. 364. See Kühnhardt, p. 26.

64 Kathryn Sikkink – The Emergence, Evolution, and Effectiveness of the Latin American Human Rights Network, in: Elizabeth Jelin/Eric Hershberg (Eds.) – *Constructing Democracy. Human Rights, Citizenship, and Society in Latin America*, Boulder/Oxford 1996, p. 59.

sion on Human Rights to a main organ of the organization. In addition, at the General Assembly session in Santiago de Chile in 1991, the Member States agreed on a historically sensitive reduction of the nonintervention principle in the Americas that had been used by many governments to defend themselves against human rights complaints.

Besides the theoretical and historical considerations, it is also necessary to mention the legal frame of human rights protection in the inter-American system. In general, international law is regarded as a highly politicized area, within which human rights represent an even more sensitive issue. Traditionally, States are only subject to international law if they commit themselves by ratifying binding treaties and by international customary law. The lack of international enforcement institutions presents yet another obstacle to enforcing even ratified international laws.⁶⁵ Moreover, the fragmentary nature of international law in general and in regard to human rights in particular is significant.⁶⁶ As is the case with any international treaty, human rights treaties pass through three phases: signing, ratification and entry-into-force. Additionally, reservations or concerns identified by the States at the signing or ratification must be mentioned. According to article 27 of the 1969 Vienna Convention on the Law of Treaties, after the ratification and entry-into-force the concerned party to a treaty cannot avoid the application of binding law through a reference to the national constitution. Nevertheless, the controversy between monism and dualism is present, particularly in regard to international human rights. While monists recognize national and international law as a

65 The European Union and particular the European Community have developed the most evolved international enforcement mechanism to date since the European Court for Human Rights and the Commission united and thus form a unique human rights instrument.

66 Of course, in the last years of the 1990s there have been developments that could lead to a more binding position of international human rights. Besides the approval of the statute of the International Criminal Court and the work of the international tribunals on war crimes for Rwanda and former Yugoslavia, the case of General Pinochet's detention in London between 1998 and 2000 as well as the trial against former dictator Milošević at the tribunal in The Hague contributed to an increasing optimism towards a more enforceable international law. Nevertheless, the author still assumes that it will be very difficult to reach a point where some day international law will be regarded as binding as national law – especially in regard to the developments in the international relations after the terrorist attacks of September 11, 2001 in the US.

single continuous legal system, the protagonists of dualism divide both in two different legal orders.⁶⁷ Here, the incorporation of international into national law is of particular concern. If the legislator refuses to transform international into domestic law, the concerned law is not binding, though article 27 of the Vienna Convention of 1969 requires it to be so.⁶⁸ In summary, it can be stated that international law in general and in regard to human rights in particular cannot refer to an established general enforcement mechanism. In spite of this fact, human rights systems have evolved in Europe and the Western Hemisphere that have been able to work quite effectively.

The OAS Charter includes several conflicts regarding the mentioned goals: On the one hand, there seems to be a discord between the task to promote human rights and the nonintervention principle (Articles 15-17), on the other hand a controversy exists between human rights and Article 16, which awards the Member States the right to shape freely the social, economic and cultural life in their societies. Article 13 of the Charter of 1948, however, limits the rights of the State to freely choose its social system by mentioning the following binding preconditions: respect for the individual rights and meeting the principles of universal morality. Nevertheless, neither these “individual rights” nor the notion of “universal morality” were specified.⁶⁹

In the beginning of the post-War period, there was a heightened focus on the contractual codification of human rights. Since the early 1970s – the period of this investigation – a dynamic began, which attempted to realize the actual protection of fundamental rights. Fifty years after the creation of the OAS and the adoption of the Universal Declaration of Human Rights in 1948, the subject of human rights has increasingly gained importance. During the 1970s, the issues that led to an intensified debate on basic rights in the OAS were primarily the

67 Regarding the dualism in international law, four questions must be considered: 1) Is the international law binding?; 2) Internal effect: Has the international law been transformed into national law?; 3) Direct effect: Is the international law justiciable?; and 4) Has there been a precedence?

68 See Thomas Buergenthal/Harold G. Maier – Public International Law, from the Series: In a Nutshell, 2nd edition, St. Paul 1990, pp. 3-15, 115-141.

69 Carta de la Organización de los Estados Americanos, Suscrita en la Novena Conferencia Internacional Americana, Bogotá, Marzo 30 – Mayo 2, 1948, in: OEA Documentos Oficiales OEA/Ser.A/2 (español), pp. 2-5. See Nacimiento, p. 78, footnote 101; p. 79.

military dictatorships in South America and in the 1980s the armed conflicts in Central America. Nevertheless, the Organization of American States was often criticized – above all in the US, but also in Latin America – for its general lack of efficiency, particularly in the period covered by this inquiry.⁷⁰ While generally Latin Americans too regarded the OAS as somewhat ineffective, it was mainly the predominance of the United States within the system that constituted the principal source of dissatisfaction with the work of the OAS. In this context it is of primary interest to review the human rights policy of the OAS, which was designed to accomplish the treaties and declarations existing in the inter-American system.

In general, an analysis of the human rights policy of the OAS in Latin America raises a vast number of questions. In consideration of the anti-Communist objective and the principle of nonintervention, it might be expected that within the OAS system there was only little margin for an effective human rights policy. However, human rights did not play a negligible role in the Organization of American States.⁷¹ In 1959, an Inter-American Commission on Human Rights was founded. Consequently, since 1948/1959, the Organization of American States created a human rights system, which developed certain type of self-dynamic. The Inter-American Commission on Human Rights interpreted its powers very broadly and as a result embarrassed several Member States of the OAS. For this reason this investigation begins with an analysis of the most important OAS entity for human rights: the Inter-American Commission on Human Rights (IACHR).

Among the questions to be discussed, the following can be mentioned:

How was the human rights apparatus of the OAS organized? How did the core body of the OAS in terms of human rights, the Inter-American Commission on Human Rights, develop – financially, institutionally, and politically? In which way did the political main organ

70 “Unfortunately, the role of the OAS was made more difficult in the decades of the 1970s and 1980s since it also reflected the weakening status of Latin America, and it was no secret that it had decreased relative to the rest of the world.” Stoetzer, p. 200.

71 Not only the OAS Charter mentioned human rights – though briefly –, but the American Declaration of Rights and Duties of Man, adopted in 1948 as well. In fact, the American Declaration preceded the Universal Human Rights Declaration.

of the OAS, the General Assembly, react to the Commission's actions? How was the human rights policy implemented, propagated and justified? Why and how did human rights in the OAS become an important topic on the inter-American agenda since the beginning of the 1970s? What was the organization's reaction towards the military regimes in the 1970s? How did the Organization of American States and the Human Rights Commission act during the Central American civil wars in the 1980s? Could the period between 1970 and 1991 be subdivided in phases?

Furthermore, four questions of general nature shall serve as the more abstract central theme of this inquiry: In consideration of the difficult cultural localization of the region in terms of human rights between universalism and cultural relativism, is it possible to put the Latin American human rights reality into the usual theoretical patterns of international human rights as regards customary argumentation categories? Was the human rights policy of the OAS a success or must it be considered a failure? Furthermore, did the United States instrumentalize the subject of human rights in the OAS? Finally, from a broader historical perspective it shall be inquired if human rights had a particular function for the virtual antagonism between Bolivarism and Pan Americanism: Did human rights play a part in this silently simmering field of force established between two conflicting conceptions?

In addition, it is reasonable to reduce the approach of this inquiry to a manageable degree. As the title indicates, the present work limits the analysis on Latin America – this excludes the English-speaking Caribbean States, Suriname, Haiti but the United States as well.⁷² In general terms, a gender perspective will not be specifically discussed because it would require the involvement of a much more theoretical field, as would the inclusion of the rights of refugees or children.⁷³ Furthermore, the rights of indigenous people or of ethnic groups, respectively, cannot be subject of investigation within the frame of this

72 An analysis of the realization of human rights in the United States would be of great interest – especially since contradictions between US human rights policy at the domestic level and in the foreign policies applied in Latin American countries could be demonstrated. However, no doubt, such an effort would be beyond the scope of the topic of the present investigation.

73 See Rebecca J. Cook – Human Rights of Women. National and International Perspectives, Philadelphia 1994, particularly pp. 3-36.

study, though this problem is relevant especially in countries such as Mexico, Bolivia, and Peru or in Central America.⁷⁴ This work mainly focuses on general human rights situations in particular countries and does not deal with individual cases, with a focus on the following examples: For the 1970s, the Chilean and Argentine cases are of interest and also, the impact of Carter's human rights policy on the OAS. For the 1980s, the focus is mostly on Central America and the OAS performance in Nicaragua, Guatemala, Panama and El Salvador, respectively.

The scientific research on human rights, human rights policy, and human rights violations is very extensive. It can be divided into political, juridical, philosophical and historical approaches, all fields which can never be completely separated.⁷⁵ Given the different concepts of human rights within the East-West-Conflict, there also exist numerous variations on these approaches. In regard to human rights and human rights violations in Latin America, the majority of research is from the legal or political science field. From the political science point of view, most case studies are based on the socioeconomic context and models of government in the respective countries. It must be emphasized here that the historical school of political science, which mainly refers to history by focusing on its relevance today, has been the prevailing doctrine throughout the United States. A recommendable volume on the history of human rights law in the Americas is available by the deceased Austrian expert on international law, Felix Ermacora.⁷⁶

74 "In the niches of South America's human rights policy stands the autochthonous population." (Translated by the author). Ermacora, p. 289, See pp. 307-309. However, this situation appears to have changed in the 1990s.

75 For example, see: Mervyn Frost – *Constituting Human Rights: Global Civil Society and the Society of Democratic States*, London 2002; David P. Forsythe (ed.) – *Human Rights and a Comparative Foreign Policy*, Tokyo 2000; Harold Hongju Koh/Ronald C. Slye (Eds.) – *Deliberative Democracy and Human Rights*, New Haven/London 1999; Jack Donnelly – *International Human Rights*, 2nd edition, Boulder/Oxford 1998; Heiner Bielefeldt – *Die Philosophie der Menschenrechte, Grundlagen eines weltweiten Freiheitsethos*, Darmstadt 1998.

76 Felix Ermacora – *Menschenrechte in der sich wandelnden Welt*, Volume III: *Amerika*, from: *Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse*, Vol. 608, *Veröffentlichungen für das Studium der Menschenrechte*, No. 3, Vienna 1994. See also: Fernando Inicarte/Berthold Wald (Eds.) – *Menschenrechte und Entwicklung, Im Dialog mit Lateinamerika*; *Bibliotheca*

In addition, the human rights policy of the United States has been subject to a multitude of works, in particular devoted to the administrations of Jimmy Carter (1977-1981) and Ronald Reagan (1981-1989).⁷⁷ Nevertheless, in regard to the human rights policy of the Reagan administration many analyses neglect the consequences of the OAS policy. In addition, there were some representatives of existent Socialism who criticized US human rights policy as hypocritical.⁷⁸ The relationship between the United States and Latin America, and between particular regions or countries of the subcontinent, has been investigated especially in relation to the human rights field.⁷⁹ A great preponderance of literature from North American origin is to note. It is important to mention that there is only little inquiry regarding the international and bilateral relations of Latin American States; this becomes even more obvious in respect to the human rights issue.⁸⁰ Until the 1970s, the US dominance toward Latin America also influenced the majority of scholarly work on Latin American foreign policy – mostly from a US perspective. Bernecker/Tobler hold that the research on Latin American foreign relations is more accurately converted into studies on US foreign policy toward Latin America. In contrast, in Latin America there has long been a prevailing focus on foreign policy studies from a perspective of diplomatic history, juridical aspects or geopolitical concerns. The reason usually used to explain this was the fact that Latin America has historically been the

Ibero-Americana, Veröffentlichungen des Ibero-Amerikanischen Instituts Preußischer Kulturbesitz, edited by Dietrich Briesemeister, Vol. 39.

77 See in the respective chapters.

78 Mikhail Savin – *US Crusade Against Human Rights*, Moscow 1986 (Russian version 1983); Vladimir Bolshakov – *Human Rights. American Style*, Moscow 1984; Vladimir Bolshakov – *This Whole Human Rights Business*, Moscow 1982 (Russian version 1980); Jan Horák – *Los Estados Unidos y los derechos humanos*, Prague 1979.

79 See John A. Britton – *The United States and Latin America: a selected bibliography*, Lanham 1997; Gaddis Smith – *The last years of the Monroe doctrine, 1945-1993*, New York 1994; David W. Dent (Ed.) – *U.S.-Latin American Policymaking, A Reference Handbook*, Westport, Connecticut/London 1995.

80 See Jeanne A. K. Hey – *Three Building Blocks of a Theory of Latin American Foreign Policy*, in: *Third World Quarterly*, 18 (1997) 4; Dieter Nohlen (Ed.) – *Demokratie und Außenpolitik*, Opladen 1991; Jennie K. Lincoln/Elizabeth G. Ferris – *Dynamics of Latin American Foreign Policies*, Boulder 1984.

receptor and not a creator of foreign policy.⁸¹ In accordance, the bibliography on the OAS and on the inter-American human rights system has largely been dominated by studies applicable to the diplomatic-juridical approach.

There are some standard works about the Organization of American States that were typically written during the earlier decades of the OAS. Wilson/Dent adequately observed that the academic research on the organization between 1975 and 1988 was meager and highly critical.⁸² The second edition of O. Carlos Stoetzer's volume, which includes a discerning analysis of the US role in the OAS, is a highly critical standard work.⁸³

In general, the evolution of the inter-American system for the protection of human rights, particularly regarding the Inter-American Commission on Human Rights, is satisfactorily discussed. Notwithstanding, according to the traditional diplomatic-juridical methodology, it should be noted that the authors – who often worked in the field of human rights in the OAS system – limit their studies to a descriptive, mainly legal analysis with very little critical discussion.⁸⁴

81 Walther L. Bernecker/Hans Werner Tobler – Staat, Wirtschaft, Gesellschaft und Außenbeziehungen Lateinamerikas im 20. Jahrhundert, in: *Handbuch der Geschichte Lateinamerikas*, Vol. 3: Lateinamerika im 20. Jahrhundert, edited by Hans Werner Tobler, Walther L. Bernecker, Stuttgart 1996, pp. 83/84. Nevertheless, the author would not completely share this point of view, since many foreign ministry archives have not been used for prolific historical research.

82 A survey on the literature on the OAS can be found in: Larman C. Wilson/David W. Dent – The United States and the OAS, in: David W. Dent (Ed.) – *U.S.-Latin American Policymaking. A Reference Handbook*, Westport/London 1995, pp. 30-33. Also See these bibliographies: David Sheinin – *Eclectic Ideal: Bringing a Positivist Order to the Literature of Pan Americanism*, in: David Sheinin (Ed.) – *Pan Americanism in Inter-American Affairs*, Westport/London 2000, pp. 213-218; David Sheinin – *The Organization of American States*, Oxford 1995; Thomas L. Welch/René Gutiérrez – *The Organization of American States, A Bibliography*, Washington, D.C. 1990.

83 O. Carlos Stoetzer – *The Organization of American States*, New York 1993, 2nd, revised edition.

84 See, for example: Jo M. Pasqualucci – The Inter-American Human Rights System: A Force for Positive Change in the Americas, in: David Sheinin (Ed.) – *Pan Americanism in Inter-American Affairs*, Westport/London 2000, pp. 195-212; Scott Davidson – *The Inter-American Human Rights System*, Aldershot/Vermont 1997; Thomas Buergenthal/Dinah Shelton – *Protecting Human Rights in the Americas, Cases and Materials*, Kehl/Strasbourg/Arlington 1995, 4th and revised edition; César Sepúlveda – *The Inter-American Commission on Human Rights*

Besides aspects like juridical differences and distinctiveness, comparative studies on the systems of human rights protection in Europe, America and in the United Nations are quite helpful.⁸⁵ In relation to the human rights policy of the OAS there are some recommendable works, in which juridical studies are the most prevalent.

These research endeavors mainly focus on juridical aspects of the evolutionary process of the human rights issue at the OAS or depict particular cases. However, there are some decent works, which go beyond a mere stocktaking: Schreiber, LeBlanc, Schoultz, Farer, Forsythe, the contributors of a book on the system edited by Harris/Livingstone, and specifically Medina Quiroga, have all analyzed the OAS human rights performance.⁸⁶ With the exception of Farer's investigation that is rich of substance and based primarily on his personal experience as member and chairman of the Inter-American Commission on Human Rights, this research does not specifically investigate institutional aspects of the OAS human rights policy. While Medina Quiroga's standard work on the inter-American human

(1960-1981), in: *Israel Yearbook of Human Rights*, Volume 12, Jerusalem 1982; Héctor Gros Espiell – L'Organisation des États américains (OEA), in: Karel Vasak – *Les dimensions internationales des droits de l'homme*, Manuel destiné à l'enseignement des droits de l'homme dans les universités, UNESCO (Ed.), Paris 1978; Héctor Gros Espiell – Le Système interaméricain comme régime régional de protection internationale des droits de l'homme, in: *Recueil des Cours de l'Académie de droit international* 145 (1975).

85 For example, A. Glenn Mower, Jr. – *Regional Human Rights, A Comparative Study of the West European and Inter-American Systems*, New York/Westport, Connecticut/London 1991; A. Glenn Mower Jr. – *The United States, the United Nations, and human rights. The Eleanor Roosevelt and Jimmy Carter Eras*, from the series: *Studies in Human Rights*, Number 4, Westport/London 1979.

86 David J. Harris/Stephen Livingstone (Eds.) – *The Inter-American System of Human Rights*, Oxford/New York 1998; Tom J. Farer – *The Rise of the Inter-American Human Rights Regime: No longer a Unicorn, Not Yet an Ox*, in: *Human Rights Quarterly*, Vol. 19, No. 3, August 1997; David Forsythe – *Human Rights, The United States and the Organization of American States*, in: *Human Rights Quarterly*, Vol. 13, No. 1 (1991); Cecilia Medina Quiroga – *The Battle Of Human Rights; Gross, Systematic Violations and the Inter-American System*, Dordrecht/Boston/London 1988; Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988; Lars Schoultz – *Human Rights and United States Policy Toward Latin America*, Princeton 1981; Lawrence J. LeBlanc – *The OAS and the Promotion and Protection of Human Rights*, The Hague 1977; Anna P. Schreiber – *The Inter-American Commission on Human Rights*, Leyden 1970.

rights system is an outstanding contribution, even her study is almost exclusively based on official OAS documents and does not refer to further sources.

Methodological difficulties do not only come as a result of different types of sources used, but also from the literature, which comes from many scientific disciplines. The literature includes legal treatises, as well as studies from the political and social sciences. The numerous other possibilities to approach the subject are striking. The topic could be examined extensively at least from the following perspectives: history of mentality, history or philosophy of law, social sciences, history of institutions, of diplomacy, of ideas, or history of events. In general, this work follows an interdisciplinary approach, since the discipline of history can be complemented ingeniously through research results of the social, political and legal sciences. From a methodological perspective, the fact that the author of this thesis is European could be looked upon as an advantage. Since he belongs neither to Latin America nor to North America, the author supposedly has a more objective perspective in view of the common resentments between the United States and Latin America.

This work begins the analysis with chapter II, which specifically addresses the Inter-American Commission on Human Rights by discussing the history of law and institutions. This chapter creates a basis for the understanding of the following two chapters, which use an approach based on the history of events and diplomacy, referring to the conclusions drawn in chapter II. Accordingly, the human rights policy of the OAS described in chapters III and IV will be more comprehensive to the reader due to the institutional background of the inter-American human rights system provided in the previous analysis.

In an attempt to answer the questions raised above, the author had the opportunity to research in the OAS Columbus Memorial Library, the IACHR library, the Library of Congress, the National Security Archive (Washington, D.C.) and the Foreign Ministry archive in San Salvador. The author also reviewed material in the Foreign Ministries and National Libraries in Santiago de Chile and Buenos Aires, the library of the Inter-American Court of Human Rights and the Inter-American Institute of Human Rights (both in Costa Rica) as well as in the libraries of certain human rights entities such as the *Vicaría de la Solidaridad* (Chile), the *Madres de la Plaza de Mayo* (Argentina) and

the Institute of Human Rights of the Central American University (IDHUCA, El Salvador). The author was also granted access to several IACHR files.⁸⁷ While as with any historical inquiry, the findings will include some imprecisions, minor omissions, and even misinterpretations. It is the author's intent, however, to present a research endeavor that is the first pioneering effort to understand the historical dimension of the OAS human rights policy by reference to sources hitherto unrevealed.

In accordance, a subdivision of the sources utilized for this inquiry into three categories seems reasonable: First, official documents and publications of the Organization of American States and the Inter-American Commission on Human Rights provide a general outline of the topic. Second, the correspondence of the IACHR as a new field of sources will provide, above all, a new perspective on the Commission itself. It is necessary to reiterate that the second category of sources is potentially fragmentary by nature. It must be taken into consideration that documents released in the future, such as those still classified at the US State Department, the Central Intelligence Agency, the Latin American Foreign Ministries or at the Organization of American States itself, may relativize or even contradict the findings presented in this investigation. The third category of sources consists of expert interviews conducted by the author between July 1999 and October 2000.

Methodologically, the interviews used here complement other available material. However, the risks that exist with the use of oral sources must also be taken into account. The selection of the interviewed persons mainly depended on their involvement in OAS human rights matters. Principally, former members and lawyers of the Commission and former OAS diplomats were among the persons interviewed, as were representatives of governments and human rights groups. Naturally, the question of the interviewee's availability was a determining factor for the interviews conducted. The method that was applied represents a mixture of qualitative and quantitative interview techniques. There were several leading questions, a sort of 'interview guide,' which served as an orientation for the direction of the inter-

87 Unfortunately, these files do not provide a very organized structure: its conservation must be described as somehow random, which always seems to be the case with archives.

view, but then the interviews were generally speaking, not bound to a strict catalogue of questions due to the qualitative approach. Unlike the common quantitative method, the interviews allowed for a certain flow of topics that mainly depended on the interlocutor. A topic as sensitive as that of the human rights policy of a still existing institution always raises the possibility of potentially false statements, omissions or modifications that may affect the information content of the oral source. In addition, through their formation and profession, the interviewed persons usually were very eloquent and had extensive interview experience. This sometimes enabled them to respond to certain sensitive questions with rhetoric statements, thereby avoiding revealing confidential or potentially uncomfortable information. Furthermore, the majority of the interviewed persons were above the age of 60 or 70, which created a situation that presumably influenced the interview situations.⁸⁸ Another factor that affects the accuracy of these interviews is the weakness of human memory to recall the past after many decades, and the selective perception of past events. This includes the risk that situations are actively or passively memorized in a way, which differs from the way in which the actual events occurred. Considering all this criticism, however, the interview material indeed does provide valuable information and findings, which would not be available had the research been limited exclusively to written sources.⁸⁹

In conclusion, from the historical perspective, the subject of the human rights policy of the OAS in Latin America has not been addressed previously. Since no comprehensive historical source studies

88 While seeking to elicit useful information, the author at the same time felt the need to pay the due respect to his interview partners appropriately. Another factor that affected the interview situation is the language issue: The author is a native speaker neither of English nor Spanish. Certainly, this also constituted another potential of difficulties concerning misunderstanding of nuances, for example.

89 See Valerie Raleigh Yow – *Recording Oral History, A Practical Guide For Social Scientists*, Thousand Oaks (USA)/London/New-Delhi 1994; Paul Thompson – *The Voice of the Past, Oral History*, Oxford/New York 1988, 2nd edition (1st edition 1978); Eva M. McMahan/Kim Lacy Rogers (Eds.) – *Interactive Oral History Interviewing*, Hillsdale, New Jersey 1994; Lutz Niethammer (Ed.), with Werner Trapp – *Lebenserfahrung und kollektives Gedächtnis. Die Praxis der „Oral History“*, Frankfurt am Main 1980; Armin Scholl – *Die Befragung als Kommunikationssituation, Zur Reaktivität im Forschungsinterview*, from the series: *Studien zur Sozialwissenschaft*, Vol. 109, Opladen 1993.

about the OAS human rights policy are available that go beyond the evaluation of official OAS documents and reports, the present investigation is designed to fill this gap of research. Therefore, it is intended that the present effort, which outlines developments, asks more systematized questions, and relies on source material unknown up to now, will lay the ground for further research and debates on these problems.

II. The Institutional Evolution of the Inter-American System of Human Rights

International, supranational or multilateral organizations constitute a singular phenomenon in the 20th century in part because of their role in creating an institutional structure intended to address international human rights.¹ It is helpful to distinguish between those institutions in which Member States transfer national competencies and powers to the multilateral organization or intergovernmental organization. In contrast with the increasingly supranational European Union, the OAS has historically been an organization of nations without many opportunities for any sort of far-reaching mandate or binding competence.² In practice, this means that the Organization of American States has been highly dependant on its Member States, the majority of which were not prepared to transfer any national competence to the organization in general, much less in cases regarding an issue such as human rights. Moreover, the geographic proximity of the OAS headquarters to influential centers of power, both international and US, indicates the potentially weak level of organizational independence the OAS faces.³

1 Although there are some precedents in the 19th century like the Danube River Commission, an institution that explicitly refers to international human rights law is a historically new occurrence of the post-World War II period.

2 The UN and the OAS are organizations wherein there is a broad competence and little binding competence: except for Security Council resolutions under chapter VII of the UN Charter, nothing imposes new legal obligations to Member States. The European Union is on the opposite side, since Member States actually transferred competence to the institutions, allowing these to bind the States – within specific domains – without their consent. It is the binding character of acts, and not the breadth of competence that makes an organization supranational or not. Furthermore, the difference between the EU and the OAS as regards its participants' self-comprehension is vividly reflected in the signs of the OAS and the EU, respectively: While the EU is represented by twelve stars of equal size, the OAS badge is formed by the banners of each Member State. As the flag demonstrates sovereignty and national pride, the OAS symbol already shows the basic fundaments of its character.

3 Besides the White House and US Congress, the OAS complex can be found next to the US Departments of State and Interior, the Federal Reserve Bank, the World Bank, the International Monetary Fund and the Inter-American Development Bank. Not far away from Washington's government district, the Pentagon and the Central Intelligence Agency are located. In the early 1970s, the IACHR had its

The first part of this chapter deals with the evolution of the inter-American system of human rights and the development of the juridical position of human rights within the OAS. Besides considering the main documents – the OAS Charter, the American Declaration of Rights and Duties of Man, and the American Convention on Human Rights – this section will emphasize the legal position of the Inter-American Commission on Human Rights (IACHR). This historical discussion of the institutional setting of the IACHR will broaden the institutional understanding, and will lead to new findings in respect to the human rights policy of the OAS. In this context, the subject will be addressed from the perspective of a cultural scientific and institutional history, with an analysis following the approach similar to the sociology of organizations.⁴ Furthermore, the Commission's views on human rights topics as well as its activities are described in order to give a better idea of the institution. Finally, a brief overview will be provided with respect to the IACHR's relations both with the OAS organs and the Member States.

II. 1. The Development of the Juridical Position of Human Rights in the Inter-American System

Marco Tulio Bruni Celli, a former member of the Inter-American Commission on Human Rights, describes the evolution of the inter-American system of human rights protection as occurring in four phases: first, the adoption of the OAS Charter and the American Declaration on Human Rights in 1948; secondly, the creation of the IACHR in 1959; third, the consolidation of the system characterized by the adoption and entry-into-force of the Convention (1969/1978), the creation of the Inter-American Court of Human Rights (1979) and the recognition of the Court's competence by some of the Member

offices in the OAS Premier Building in Washington, D.C.'s downtown 'I' Street. Since 1983, the Secretariat of the Inter-American Commission on Human Rights has been lodged in the OAS Building in 'F' Street, between 18th and 19th St. The fact that such important international and US agencies are very close to the IACHR and the OAS lead to the assumption that there might have been an interactive influence potential.

4 See Reinhard Blänkner – Überlegungen zum Verhältnis von Geschichtswissenschaft und Theorie politischer Institutionen, in: Gerhard Göhler (Ed.) – Die Eigenart der Institutionen, Zum Profil politischer Institutionentheorie, Baden-Baden 1994, p. 102.

States; and finally, the fourth stage marked by the institutional and normative developments of the system since 1980. This last phase includes the first judgements and Advisory Opinions of the Court, the extension of the Commission's powers, and above all the international codification of human rights in the regional system. The latter was constituted by the adoption of the Additional Protocols to the American Human Rights Convention, concerning economic, social and cultural rights (Protocol of San Salvador 1988) and the abolition of the death penalty (1990). Likewise, the Inter-American Convention to Prevent and Punish Torture (1985), the Inter-American Convention on Forced Disappearance of Persons (1994) and the Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará", 1994) have been important steps within the inter-American human rights system.⁵

To these four phases described above, a fifth phase should be included; characterized by the *refinement* or *sophistication of the human rights system*. This phase began after 1991 and emphasized new areas such as women's rights, rights of indigenous people, and children's rights. Likewise, the reports of the Inter-American Commission included chapters on international humanitarian law, in the Commission's Report on Colombia of 1998, for example. Another phenomenon of the 1990s, which had already begun in the early eighties, was the question of how to address human rights violations of the past. This problematic issue still remains as part of the history of Latin America, and is characterized by the apparent dialectic between truth and justice on the one hand and reconciliation and a new beginning on the other. At the same time, this item revealed the chronic weakness of the juridical systems – another serious problem in respect to human rights. In general, the Commission's interaction with the governments, which at least were formally democratic, turned out to be more difficult and often human rights complaints were dismissed just because they came from these formally democratic nations.⁶ This was one rea-

5 Marco Tulio Bruni Celli – Sistema Interamericano de Protección de Derechos Humanos. Discurso del 29 de mayo de 1995 en el Seminario de la Fundación Konrad Adenauer, en Quito; in: Konrad-Adenauer-Stiftung (Ed.) – Serie de Publicaciones sobre Política Economía Derecho, 1995, No. 2: Marco Tulio Bruni Celli, Alfred de Zayas, Julio Prado Vallejo; Derechos Humanos y Administración de Justicia, Quito/Ecuador, pp. 59/60.

6 Interviews.

son that led the Commission to focus mainly on cases, which contributed to the legalization of its publications because the individual cases from democratic States were often highly sophisticated.⁷ This fifth phase, however, will not be addressed in this discussion.

The basic OAS document, the Charter, which was approved in Bogotá in 1948, is based on the purposes of strengthening peace and security in the hemisphere and promoting representative democracy and the cultivation of the nonintervention principle. Nonintervention was considered as a binding legal obligation and human rights a mere issue of principles.⁸ In practice, different interpretations could be observed: some Member States approved a binding effect of the Charter, while other governments merely accepted the Charter as a set of orienting guidelines.⁹ Although it constituted one of the organization's principles, the original OAS Charter mentioned human rights only marginally and in a very general manner in its preamble and in articles 3 (j) and 16. Kokott is surprised by this fact: first, the OAS document, unlike the UN Charter, does not include an organ to protect human rights (Human Rights Commission). In fact, since the conference of Bogotá in 1948, human rights had become the hobbyhorse of Latin American States.¹⁰ However, the Charter of 1948 represented a weakened version. A text that assigned a stronger position to human rights had been refused with a reference to the limitation of national sover-

7 In contrast to prevailing violations of the 1970s and 1980s such as massive murder, torture and disappearances, the 1990s increasingly witnessed cases on more sophisticated topics like economic issues.

8 See David Harris – Regional Protection of Human Rights: The Inter-American Achievement, in: Harris/Livingstone (Eds.), p. 5; Medina Quiroga, p. 51. In 1985, the nonintervention principle was even reaffirmed. AG/RES. 782 (XV-0/85): Reaffirmation of the Principle of Nonintervention, in: OEA/Ser.P/XV.0.2, 2 April 1986, Volume I, Fifteenth Regular Session, Cartagena de Indias, Colombia, December 5-9, 1985, pp. 44/45.

9 Davidson, pp. 7/8. An example for such a guideline perspective could be found at the 1960 session of the OAS Council to honor the IACHR members. See: OEA/Ser.G/II C-a-388 (Protocolar), 13 octubre 1960, Acta de la Sesión Protocolar celebrada el 13 de octubre de 1960: En honor de los miembros de la C.I.D.H., pp. 7, 14. See also: OEA/Ser.G/II C-a-373, Acta de la sesión Ordinaria, celebrada el 8 de junio de 1960, p. 38.

10 Juliane Kokott – Das interamerikanische System zum Schutz der Menschenrechte. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 92, Berlin/Heidelberg/New York/London/Paris/Tokyo 1986, p. 11.

eignty.¹¹ The Uruguayan proposal to establish a system of multilateral interventions to defend human rights had been rejected by a great majority. Mexico, in particular, was uneasy about more emphasis on human rights than on nonintervention in the Charter due to its proximity to the United States and its historical experience of losing national sovereignty (and even territory).¹²

The OAS Charter also made a reference to socioeconomic rights. Article 29, section A, names material well being and spiritual growth together with conditions of freedom, dignity, and equality of opportunities and economic security. Moreover, section B of that article states that work is a right and a social duty. This article shows that human rights of the second generation entered into the Charter. Indeed, the First Committee approved that article, but it added a limiting explanation, which decisively weakened its efficacy.¹³

In general, in 1948, the American States did not agree to risk submission to binding treaties concerning the protection of human rights. The formulation of the articles, however, did leave open the possibility for the advancement of the system. At the time of the preparation of the OAS Charter, the States preferred to let each Member State guarantee human rights at the national level instead of awarding this competence to a supranational organ.¹⁴ Accordingly, Schreiber concludes:

“Several articles of the O.A.S. Charter contain references to human rights but the records of the Bogotá Conference generally indicate that they were not intended to create a system of international le-

11 Kokott, p. 13. Above all Mexican delegates rejected a strong mentioning of human rights. See *ibid.*, footnote 49.

12 Above all the Mexican subcommittee insisted not to install human rights as a subject of treaty obligations. On the other hand, Brazil favored the mentioning of human rights in the Charter. Anna P. Schreiber – *The Inter-American Commission on Human Rights*, Leyden 1970, p. 18. See Medina Quiroga, pp. 37, 38.

13 “Section (b) of the article does not imply that the state must give work to all, but that it must bring about adequate economic conditions in order that all person must work.” See Schreiber, p. 21.

14 Typical for this basic attitude was the title of an agenda point for the 10th Inter-American Conference in Caracas (1954): “Human Rights – Measures tending to promote human rights without detriment to national sovereignty and the principle of nonintervention.” (OAS, Consejo, Acta de la sesión extraordinaria celebrada el 10 de noviembre de 1953, OEA/Ser.G/II (C-a-136), p. 1201; Schreiber, pp. 22/24.

gal protection of human rights. The statesmen who drafted these articles took care to exclude the possibility that they might be interpreted to incorporate the American Declaration of the Rights and Duties of Man into the Charter.”¹⁵

As mentioned above, at the discussions on the American Declaration in 1948 the delegations of Uruguay and Mexico represented the two advocates of opposite opinions: While Uruguay did not want to delegate the responsibility for human rights matters to the competence of the individual States, Mexico’s delegation due to its conviction not to interfere in inner affairs between State and citizen, refused to create a binding human rights protection and a corresponding institution. In order to emphasize its point, Mexico underlined that human rights protection was an area that already existed in the national constitutions.¹⁶

The American Declaration of Rights and Duties of Man, which was approved at the same time as the Charter, was not legally binding. The proposal to incorporate the Declaration into the OAS Charter was brought down by a six-to-fifteen vote.¹⁷ In addition to the Universal Declaration of Human Rights of the United Nations, that document counts as one of the first international human rights declarations with a universal comprehensive character. Article XXVIII is of interest: “The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.” This article could provide an argumentative basis for revolutionary guerrilla movements that longed for “general welfare” of the poor, as well as for right-wing military regimes who wanted to (re-) establish national security by all means although declaring their actions as measures for “advancing democracy”¹⁸.

15 Schreiber, p. 17.

16 Grace Nacimiento – Die Amerikanische Deklaration der Rechte und Pflichten des Menschen, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 127, Berlin, Heidelberg, New York, Barcelona, Budapest, Hongkong, London, Milan, Paris, Santa Clara, Singapore, Tokyo 1997, pp. 67/68.

17 David Forsythe – Human Rights, The United States and the Organization of American States, in: Human Rights Quarterly, Vol. 13, No. 1 (1991), p. 77. Nacimiento, p. 68.

18 Revolutionary guerrilla movements have not been regarded as subjects of international law. Not even international ‘soft law’ would be concerned, although they might be concerned in terms of humanitarian law.

The recipients of the normative provisions of the Declaration have been the Member States. The human rights declaration did not differentiate between the first and second generation of human rights, but did contain far-reaching rights of the second generation. It is important to note that a broad interpretation of those rights is included in order to avoid the interpretation that these rights be considered self-executable.¹⁹ For example, the right to work was modified to read the 'duty to work'. Article XI shows the limitation of socioeconomic rights, since it conditions the realization of the right to health, combined with nutrition, clothes and shelter to the available resources.²⁰

This Declaration has served as a source of inspiration and guidelines in particular for the Inter-American Commission on Human Rights.²¹ Nevertheless, LeBlanc concludes that "...the Declaration places the burden on the individual as regards the exercise of the so-called rights, not on the state."²² Likewise, in regard to the provisions of the Declaration and the American Convention on Human Rights, Crahan considers economic, social and cultural rights more as the duties of the individual than of the State.²³ However, the inter-American legal instruments do provide provisions to observe women's rights considering the right to equality before the law and to nondiscrimination.²⁴ The Declaration includes an article on the special protection of

19 Human rights obligations formulated as non self-executable can only be implemented through the adoption of domestic norms that clarify the means of execution of the obligation. In the case of the vaguely formulated second generation rights of the Declaration, although there are rights to work, education, health and social security, only domestic measures can give these rights any effect in practical terms. More important, no domestic judge can be asked to rule in favor of such rights without invading the competence of the other branches of government, particularly the law-making faculties of the legislative branch. Therefore, roughly, non self-executable rights are deprived of effects in the domestic order, and cannot be claimed against the states by individuals or groups.

20 See LeBlanc, p. 37.

21 Kokott, p. 14.

22 LeBlanc, p. 39.

23 Margaret E. Crahan – The State and the Individual in Latin America: Some Implications for Human Rights, Woodstock Theological Center, Georgetown University, Washington, D.C. October 1979, p. 36.

24 See Declaration, article II; Convention, article 1 and 24 as well as Declaration, article XVII; Convention, article 3. Cecilia Medina – Women's Rights as Human Rights: Latin American Countries and the Organization of American States (OAS), in: Myriam Díaz-Diocaretz/Iris M. Zavala (Eds.) – Women, Feminist

women during pregnancy, the nursing period and of children.²⁵ Nevertheless, the Commission did not focus on women's rights. Moreover, the argument that the OAS Inter-American Commission on Women (CIM) should handle women's rights instead of the IACHR is not very convincing, since the CIM was not composed of independent individuals like the Commission but of government representatives.²⁶

Besides the Charter and the American Declaration of 1948, the American Convention and its Additional Protocols represent the second relevant element in the inter-American system of human rights protection. Resolution VII of the Fifth Meeting of Consultation in 1959 did not only create the Inter-American Commission on Human Rights, but also appointed the Inter-American Juridical Committee to prepare a draft of a human rights convention. The draft was finished in 1965 and transferred to the Second Specialized Inter-American Conference in Rio de Janeiro in November 1965. The Conference decided to transmit the draft convention for an evaluation. After several delays – provoked by questions such as if a regional human rights convention would make sense in view of the International Pact on Civil and Political Rights of the UN²⁷ – the historic Special Conference in San José of 1969 approved the American Convention on Human Rights, the so-called Pact of San José.²⁸ According to its article 74 (2), the Convention entered into effect in July 1978 after the deposit of the eleventh instrument of ratification of a Member State. The Convention is inspired by the European Human Rights Convention, but also relies on the International Covenant on Civil and Political Rights, in particular

Identity and Society in the 1980s. Selected Papers, Amsterdam/Philadelphia 1985, p. 75.

25 Declaración Americana de los Derechos y Deberes del Hombre, in: F.V. García-Amador (Comp.) – Sistema Interamericano a través de tratados, convenciones y otros documentos, Volumen I: Asuntos Jurídico-Políticos, Washington, D.C. 1981, p. 521 (Article VII).

26 Cecilia Medina – Women's Rights as Human Rights, p. 74, see also pp. 75/76.

27 Referring to the general sense of regional systems of human rights protection, Bruni Celli points out that this certainly could lead to confusion, but that regional systems also had an advantage: Through its higher degree of homogeneity and a certain extent of ideological conformity, similar culture and development, they might be more efficient in the regional context. Bruni Celli, pp. 60/61.

28 Davidson, pp. 30/31. The IACHR participated in the Conference as Technical Advisory Agency. See Inter-American Specialized Conference on Human Rights – Final Act, San José, Costa Rica, November 7-22, 1969; OAS Official Records, OEA/Ser.C/VI.18.1 (English).

in regard to the formulation of the rights catalogue. The American Convention is much more extensive than most of the international human rights instruments. It contains 82 articles and codifies more than two dozen particular rights. It includes more far-reaching rights than the European Convention or the UN Civil Rights Covenant, but Buergenthal doubts if there is even a single country in the Americas that respects all of them. This fact did not hinder the Member States from depositing the necessary instruments of ratification – most of them without reservations – “...notwithstanding the fact that the de jure and de facto conditions in at least some of the ratifying countries should have prompted a larger number of reservations.”²⁹ However, the entry-into-force of the Human Rights Convention was preponderantly reached only through the endeavors of the US administration of President Jimmy Carter.³⁰ Carter took advantage of the presence of many Latin American heads of state in Washington attending the signing celebration of the Panama Canal Treaties in 1977. On that occasion, Carter convinced some presidents to sign and ratify the Convention and they did so later.³¹ Accordingly, one of the reasons for the entry-into-force was that the Carter administration emphasized the role of human rights in its foreign policy. On the other hand, Latin American States seemingly ratified the Convention in the belief that it would merely serve as a kind of an international law decoration, while the respective governments expected to continue shaping domestic policy in their own way.³²

Since the entry-into-force of the American Convention on Human Rights, there has been a dual structure of human rights protection in the inter-American system. On the one hand, there were States that were committed to the Convention as Members. On the other hand, the OAS Charter was binding for the rest of the Member States. The

29 Thomas Buergenthal – The Inter-American System for the Protection of Human Rights, in: *Anuario Jurídico Interamericano* 1981 (OAS 1982), pp. 105-109, 80-81. In: Thomas Buergenthal/Dinah Shelton – *Protection Human Rights in the Americas. Cases and Materials*, Kehl/Strasbourg/Arlington 1995, 4th updated edition, p. 42.

30 Still in 1977, LeBlanc estimated the possibility of an entry-into-force of the Convention as unlikely. LeBlanc, p. 23. See chapter III. 2.

31 Interviews.

32 Interviews. For a view of 1960, see: OEA/Ser.G/II C-a-373, Acta de la sesión Ordinaria, celebrada el 8 de junio de 1960, p. 38.

Inter-American Commission on Human Rights was responsible for the supervision of compliance by both groups of States. The members of both instruments for the protection of human rights in the inter-American system – the Commission and, since 1979, the Court – were elected by the General Assembly. While all Member States voted for the Commission members, the judges of the Inter-American Court for Human Rights could only be elected by the States that were parties and belonged to the Convention.³³

In 1988, the Additional Protocol to the American Convention on Human Rights, regarding economic, social and cultural rights – the Protocol of San Salvador – was approved by the General Assembly in that Central American country. On June 8, 1990 the General Assembly also approved a second Additional Protocol to the Convention to abolish the death penalty. While the Protocol of San Salvador entered into force in late 1999 by Costa Rica's deposit of the last ratification needed, the Additional Protocol to abolish the death penalty is not yet in force. In 1990, Canada became a Member State of the OAS – a historical shift that also affected the organization's stand on democracy and human rights. Naturally, the financial resources of the traditionally democratic North American country provided more protection for human rights as well. In 1991, the General Assembly in Santiago de Chile approved resolution 1080 that limited the nonintervention principle. On December 14, 1992, the Protocol of Washington was approved: with the approval of two-thirds of the OAS Members, Article 9 of that protocol includes the possibility to exclude Members States from the OAS in which democratic governments have been overthrown by violence.³⁴

This brief summary of the constitutional achievements concerning human rights within the inter-American system already shows that it matured slowly but unstoppably. The most famous and controversial stage began in the early 1970s. This was also the time when the Inter-

33 See American Convention on Human Rights, Articles 36 and 53. Thomas Buergenthal – The Inter-American System for the Protection of Human Rights, in: T. Meron (Ed.) – *Human Rights in International Law*, pp. 451-454, Oxford 1984, Vol. II, in: Buergenthal/Shelton, p. 51. Costa Rica proposed the distinguished human rights expert Thomas Buergenthal to become judge of the Court. Although his country, the United States, was not party to the Convention, his reputation all over the hemisphere led to his election.

34 Buergenthal, in: Buergenthal/Shelton, pp. 43/44.

American Commission underwent a significant development and became a highly controversial institution within the inter-American system.

At the Tenth Inter-American Conference in Caracas in 1954, a discussion on the creation of a human rights commission began. However, several delegations rejected this proposal with the argument that such a commission would present a risk for solidarity in the hemisphere and threaten the nonintervention principle.³⁵ Finally, in 1960, the Inter-American Commission was established as an 'autonomous entity' after the Meeting of Consultation of Foreign Ministers in Santiago de Chile had agreed on its creation in 1959.³⁶ The creation of the Commission, which was described by Sepúlveda – doubtlessly not in a depreciating tone – as an “accident”³⁷, derived from the political atmosphere in the region characterized by instability and a growing awareness of the connection between human rights and the maintenance of democracy.³⁸ Among the concrete reasons for the changed mood were the Cuban Revolution of January 1959³⁹ and the subsequent invasion attempts in the region⁴⁰, in addition to the human rights

35 Schreiber, pp. 25/26.

36 OAS, Fifth Meeting of Consultation of Ministers of Foreign Affairs, *Actas y Documentos*, OEA/Ser.F/III.5 (Washington: Pan American Union), p. 308-309, in: Schreiber, p. 27. Already before the formation of the OAS, the Inter-American Juridical Committee had proposed to create an Inter-American Consultative Commission on Human Rights functioning as a suborgan to the Inter-American Economic and Social Council. LeBlanc, p. 43.

37 César Sepúlveda – The Inter-American Commission on Human Rights (1960-1981), in: Israel Yearbook on Human Rights, Volume 12, Jerusalem 1982, p. 47. Medina Quiroga, p. 67.

38 In addition, Farer mentions the lack of controversy in the experience with the European Commission as a reason for the creation of the Commission. Tom Farer – The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox, in: Harris/Livingstone, p. 34.

39 David J. Padilla – The Inter-American Commission on Human Rights of the Organization of American States: A Case Study, 9 *American University Journal International Law & Policy* 95 (1993), reprinted in: Buergethal/Shelton, p. 293. See Karel Vasak – La Commission Interaméricaine des Droits de l'Homme, Paris 1968, p. 21. Forsythe, p. 82.

40 In April 1959, a Cuban invasion was crushed down in Panama. In June, Nicaraguan officials complained an unsuccessful invasion on their territory as well. During the same month, four hundred exile Dominicans marched from Cuba into the Dominican Republic. Schreiber, p. 28. See Informe Anual presentado por la

situation in the Dominican Republic.⁴¹ Ironically, the Meeting of Consultation also addressed the nonintervention principle. Thus, the session favored human rights but without limitations to nonintervention. Further, the Cuban delegation wanted the human rights issue to be elevated onto the OAS agenda.⁴² Cuba's government was expelled from the organization in 1962 when the United States pushed through a resolution, which interpreted Cuba's Socialist model as incompatible with the OAS principles. However, the State of Cuba officially remained an OAS Member, but in the following years its government refused to cooperate with the IACHR at all, arguing that through its expulsion from the OAS it would not recognize the Commission's competence for human rights matters in Cuba. The situation in the Dominican Republic played a decisive role for the creation of the IACHR as well. The government of the Dominican president Trujillo, which was accused of human rights violations, threatened to attack Cuba and also charged Venezuela with complicity. In contrast, Cuba and Venezuela required excluding the Dominican Republic from the OAS due to its lamentable human rights record. Additionally, an assassination attempt against the Venezuelan president Rómulo Betancourt occurred in June and was attributed to the Dominican Republic.⁴³ As a result of these tensions, the Conference of Santiago was convened in August 1959.⁴⁴

At the meeting in the Chilean capital in 1959, Cuba and Venezuela advocated a strong position in regard to a collective condemnation of all dictatorships.⁴⁵ The Venezuelan president Betancourt – also regarding the situation in the Dominican Republic – stated that the protec-

CIDH a la Asamblea General correspondiente a 1974, OEA/Ser.G, CP/doc.399/75, 9 enero 1975, p. 2.

41 Stoetzer, pp. 45/46. See César Sepúlveda – The Inter-American Commission on Human Rights of the Organization of American States, 25 Years of Evolution and Endeavour, in: German Yearbook of International Law, Volume 28, 1985, p. 67.

42 Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago de Chile 1959, Doc. 1 Rev. 5, 27 agosto 1959, Vol. I, p. 10. For an overview concerning the context in which the Meeting took place, See: Félix Fernández-Shaw – La Organización de los Estados Americanos (O.E.A.), Una nueva visión de América, Madrid 1963, 2nd edition, pp. 490-497. Schreiber, p. 87.

43 LeBlanc, p. 46.

44 See also Medina Quiroga, pp. 54-58.

45 LeBlanc, p. 47.

tion of human rights did not constitute interference in domestic affairs of American States. Although the majority of Member States opposed the so-called Betancourt Doctrine favoring democracy and human rights⁴⁶, the Fifth Meeting of Consultation of Foreign Ministers in Santiago approved a two-part resolution concerning human rights. The first part of this document required the Inter-American Juridical Committee to prepare a draft document regarding an American Convention on Human Rights and an Inter-American Court for Human Rights. While this part was approved unanimously, several States voted against the second paragraph of the resolution, which called the OAS Council to establish an Inter-American Human Rights Commission.⁴⁷ The voting was preceded by debates on the powers of the new organ and conflicts of goals concerning the nonintervention principle. Medina Quiroga correctly summarizes that “[t]he OAS had made it clear that it had no desire to create a body that would interfere in any

46 David W. Dent – *The Legacy of the Monroe Doctrine. A Reference Guide to U.S. Involvement in Latin America and the Caribbean*, Westport/London 1999, p. 375.

47 Scott Davidson, *The Inter-American Human Rights System*; Aldershot/Brookfield, USA/Singapore/Sydney 1997, pp. 15/16. 15 Member States voted for the second part of the resolution as well. Brazil, the Dominican Republic, Mexico and surprisingly also Uruguay gave a negative vote, while Bolivia and the United States abstained. The Mexican representative voted against the establishment of the Commission by justifying the negative vote with the argument that a higher organ than the OAS Council should legitimize such an institution. Brazil referred to similar explanations. In contrast, the delegates of Venezuela and Peru proclaimed that the nonintervention principle should not serve as a defense argument for tyrannies. Merely the Dominican Republic rejected out of understandable reasons the formation of the Commission a priori. Schreiber, pp. 29, 38. LeBlanc, however, emphasizes that the United States only accepted the Commission's establishment with a reservation, which was explained with the country's federal structure that would not allow acceding to multilateral conventions in relation to the protection of human rights. LeBlanc, p. 48. Schreiber interprets the position of the United States in 1959 as a first change because it supported a Convention on Human Rights and did not oppose the creation of a Human Rights Commission on principle. Above all, the Dominican Republic and the United States resisted, though both States' opposition was reasoned differently: The Dominican Republic refused a Human Rights Commission because such an institution obviously was directed against the Trujillo regime. In contrast, the US delegation did not oppose the Commission's Statute categorically; its concerns focused more on particular paragraphs. Finally, LeBlanc summarizes, the US objections were decisive for the final version of the Statute. LeBlanc, pp. 48/49.

way with the “domestic affairs of the Member States”.⁴⁸ Likewise, Stoetzer states that the “...governments shied away from giving the commission such wide powers, since it obviously could lead to violations of the principle of nonintervention.”⁴⁹

Finally, after the submittal of a number of drafts to the Member States, the OAS Council approved the Commission’s Statute after the right to individual complaints – which had been incorporated in the final draft of the preparing committee – was taken out of the document. The right to individual petitions⁵⁰ was one of the most controversial subjects.⁵¹ Though many Latin American governments decided not to vest the new Commission with the power to handle individual petitions, it was the pressure of the United States, especially in the case of several Central American States, that assured resistance against the inclusion of this right.⁵² Accordingly, Ball emphasized in comparison to Europe, the newly created Commission was “quite innocuous”. More important than what the Commission could do was what it was not authorized to do.⁵³

According to Davidson, the creation of a Human Rights Commission as an ‘autonomous entity’ by a conference resolution should serve to maintain the political neutrality and the general autonomy of the new institution. If the Commission were established as a subsidiary organ of the OAS Council, it would have lacked independence and the necessary impartiality to realize its tasks.⁵⁴ Nevertheless, the Commission had always depended on the budget provided by the mother organization as well as on political will to let it function. This

48 Medina Quiroga, p. 70.

49 Stoetzer, p. 117.

50 The US delegate opposed individual petitions because those would have meant ‘protection’ of human rights, while the conference resolution of Santiago only awarded the Commission the task of ‘furthering respect’, of a promotion of the basic rights. Schreiber, p. 36.

51 In the OAS Council, there was an opposition against the creation of the IACHR with the result that the draft Statute of the latter was modified three times within nine months. LeBlanc, pp. 48/49. “One of the major factors impelling many governments to oppose the right of petition may have been the fear that it would expose the gap between constitutional guarantees and practical application which existed in many American States in matters pertaining to human rights.” Schreiber, p. 39. See Introduction.

52 Schreiber, p. 38.

53 Mary Margaret Ball – *The OAS in Transition*, Durham 1969, p. 376.

54 Davidson, p. 16.

was the case before and after the Commission's elevation to become a principal organ of the OAS. However, before the reform of the Charter in 1970, the OAS Council possessed the competence to elect the Commission members, to modify its Statute, and to approve the IACHR's budget. After the entry-into-force of the Protocol of Buenos Aires in 1970, the General Assembly was vested with these tasks. In practice, most of these powers did not influence the decisions of the Commission. The small budget affected the Commission's autonomy more than the potential powers of the OAS Council. Also, the OAS Council did not invoke its right to modify the Statute of the IACHR to hinder or influence the Commission's work. In contrast, many amendments of the Statute awarded the Commission broadened its functions.⁵⁵

The Commission had its legal fundament in its Statute of 1960 (amended in 1965), its rules of procedure of 1961 (amended in 1967) and the American Declaration until the entry-into-force of the American Convention on Human Rights.⁵⁶ Article 2 of the Statute of 1960 defined human rights by a reference to the American Declaration of Rights and Duties of Man of 1948. Hence, the normative orientation of the Commission was based simply on a non-binding declaration.⁵⁷ At the creation of the Commission, the problem of priorities of rights was left out. This meant that there was no reference to particular rights of the American Declaration. In spite of this fact, at its first session the Commission members decided to focus particularly on a small group of rights, which were seen as of fundamental importance. Due to a historical perspective, some individual rights were prioritized; among those the right to life, liberty, and freedom of opinion.⁵⁸

According to Article 9 of the Statute of the Inter-American Commission on Human Rights of 1960, the latter had tasks and powers as follows:

- a) To develop an awareness of human rights among the American peoples
- b) To make general recommendations to the governments in order to

⁵⁵ Schreiber, pp. 41-43.

⁵⁶ Nacimiento, p. 95.

⁵⁷ Kokott, p. 21.

⁵⁸ Article 20(a) of the IACHR Statute – then with another number – orders the Commission to pay special attention to certain civil rights.

adopt measures favoring human rights within the frame of the respective national constitutions

- c) To prepare studies and reports, which the IACHR considers appropriate for the realization of its duties
- d) To urge governments of the Member States to provide information in regard to human rights related measures
- e) To serve as an advisory body to the OAS in human rights matters

At its first session, the Commission members concluded that the IACHR had the competence to direct specific common and individual recommendations concerning human rights violations to the OAS Member States. Likewise, the Commissioners decided to prepare studies and reports, which dealt with human rights situations in countries where widespread abuses took place. Although the Commission received numerous reports from individual persons, it found that it did not have the competence to make decisions regarding these petitions.⁵⁹

Its Statute authorized the IACHR to elaborate and approve its own regulations and rules of procedure without consultation with the political bodies of the OAS.⁶⁰ Since 1960, the Commission had worked on its regulations. Several regulations merely repeat provisions of the Statute while others concern matters such as the duties of the chairman, the distribution of reports and studies or the establishment and work of the subcommittees but then also provisions regarding the on-site observations. In the beginning, the Commission usually set up a sub commission composed of the chairman and the vice chairman, a third member and a substitute member. Previous to the Commission sessions, this sub commission examined the petitions received and prepared the work program for the IACHR meeting in cooperation with the Secretariat.⁶¹ This standing sub-commission worked when the Commission was not in session and submitted recommendations to the

59 OEA/Ser.L/V/II.1, Doc. 32, March 14, 1961: Inter-American Commission on Human Rights – Report on the work accomplished during its first session. October 3-28, 1960, pp. 9/10. See Kokott, pp. 21/22.

60 Christina Cerna – The Inter-American Commission on Human Rights: Its Organization and Examination of Petitions and Communications, in: Harris/Livingstone, p. 69.

61 CIDH – Informe sobre la labor desarrollada durante su vigésimoprimer período de sesiones, 7 al 17 de abril de 1969, OEA/Ser.L/V/II.21, Doc.271, Original: español, 20 febrero 1970, p. 15.

entire Commission. Other subcommittees could be established in the OAS headquarters or in the territory of each OAS Member State; the latter with the permission of the concerned government. The most important regulations concern the procedures regarding the petitions.⁶² As the Commission could prepare its own regulations, the members agreed that an absolute majority should constitute a quorum.⁶³

Its exemplary performance during the political crisis in the Dominican Republic⁶⁴ in the early- and mid-sixties (in particular during the crisis in 1965) resulted in the Commission being held in high esteem in the region. The activities of the IACHR, especially during the on-site observations in the Dominican Republic, contributed to a widespread acceptance of the need to legally enshrine the *de facto* practices of the Commission. Yet at the Eighth Meeting of Consultation of Foreign Ministers in 1962, Resolution IX had sanctioned the Commission's practice, which obviously was based on a very broad interpretation of its mandate.⁶⁵ According to the broadening of the IACHR's Statute that took place at the Special Conference in 1965, the Commission's powers were extended to investigate petitions that concerned certain fundamental civil and political rights.⁶⁶ Those rights are defined in article 9bis.⁶⁷

62 LeBlanc, p. 55.

63 Regulations of the IACHR, Article 20, OEA/Ser.L/V/II. 17 Doc. 26, May 2, 1967. AG/RES. 447 (IX-0/79) Statute of the IACHR, Article 17, 1. In its Regulations of 1967, the Inter-American Commission on Human Rights agreed to take decisions by an absolute majority vote of the Commission members, except in cases of procedure where a simple majority was sufficient (Article 23, Regulations). Regulations of the IACHR, OEA/Ser.L/V/II.17 Doc.26, May 2, 1967; in: General Secretariat OAS, Washington, D.C. 1972 – *La Organización de Estados Americanos y los Derechos Humanos, Actividades de la CIDH 1960-1967*, Human Rights Yearbook 1960-1967, p. 615.

64 See, for instance, V. Shiv Kumar – *US Interventionism in Latin America. Dominican Crisis and the OAS*; New York 1987, pp. 93-108.

65 Kokott, p. 23.

66 LeBlanc, pp. 27/28.

67 The following rights of the American Declaration enjoyed priority:

Art. I Right to life, liberty, and security of the person

Art. II Right to equality before the law

Art. III Right of freedom of religion and belief

Art. IV Right of freedom of investigation, opinion, expression and distribution of ideas

Art. XVIII Right to a fair process

Accordingly, the Second Inter-American Special Conference in Rio de Janeiro in 1965 abolished the Commission's lack of competence to handle individual petitions. Individual complaints will not be discussed here due to their mostly juridical character.⁶⁸ The Conference in 1965 had been convened by Guatemala's request. That Central American country sought to discuss *inter alia* the strengthening of democracy as well as a better protection of human rights in the Americas.⁶⁹ Through the approval of Resolution XXII, the OAS Special Conference of November 1965 extended the competence of the IACHR, followed by a reform of the Commission's Statute. Not merely the promotion but also the control and observance of human rights were named as the organ's tasks. Kokott judges that the extension of powers reached at the Special Conference even exceeded the Commission's requests.⁷⁰ Clearly, it was mainly the activities of the IACHR that contributed mostly to its exceptionally positive image and led to the expansion of powers in its Statute.⁷¹

In April 1966, at its 13th period of sessions in Mexico City, the Commission adopted the extensions of its Statute expressed in article 9bis. The Commission assigned itself with two procedures: a new procedure in relation to the handling of the mechanism of individual peti-

Art. XXV Right to protection against arbitrary detention

Art. XXVI Right to a due process of law

Nevertheless, Commission member Dunshee de Abranches rejected to include the right to vote in 1973 since it would constitute a political matter outside the IACHR's competence. IACHR – Report on the Work Accomplished by the IACHR at its Thirty-First Session, (October 15-25, 1973), OEA/Ser.L/V/II. 31 doc. 54 rev.1, 12 June 1974, Original: Spanish, p. 65.

68 On the Commission's procedures concerning individual petitions, see Andrés Aguilar – Procedimiento que debe aplicar la Comisión Interamericana de Derechos Humanos en el examen de las peticiones o comunicaciones individuales sobre presuntas violaciones de derechos humanos, in: Human Rights in the Americas, Homage to Carlos Dunshee de Abranches, pp. 199-216; Atilio N. Molteni – El derecho de petición y el sistema interamericano de protección de los derechos humanos, in: *ibid.*, pp. 188-198; Medina Quiroga, pp. 145-151.

69 Davidson, p. 17.

70 Kokott, p. 23.

71 "Instead of listing these powers [in the new Statute, K.D.] in formal fashion, there follows an informal analysis of commission capabilities that is derived less from the Statute and regulations than from an examination of what it actually has done." Bryce Wood – Human Rights and the Inter-American System, in: Tom J. Farer (Ed.) – The Future of the Inter-American System, New York 1979, p. 124.

tions and the old procedure, which referred to the general observation function derived from the Charter. Although the Member States did not intend to do so, the Commission's interpretation resulted in a 'dual procedure' which allowed the Commission to distinguish between 'general' and 'individual' cases in regard to investigations of human rights situations in Member States of the OAS.⁷² Consequently, the Commission decided to be empowered to investigate 'individual' and 'general cases', to which different regulations applied, respectively.⁷³ The handling of a general case did not require the exhaustion of domestic remedies, as it was the case in relation to individual petitions.⁷⁴ In many cases, this dual procedure became a decisive technical-methodological advantage. The distinction became an important factor: Many accused governments argued with the regulations that applied to individual cases when they referred to an IACHR report on the general situation in a Member State.

Resolution XXII of 1965 requested the Commission to pay special attention to the articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration. The following tasks and competences were mentioned in the new article 9bis of the Statute:

- a) To observe human rights in particular regarding rights mentioned above
- b) To study all available information, to request information from each government of the American States, and to prepare recommendations.
- c) To transmit an Annual Report to the Inter-American Conference or the Meeting of Consultation of Foreign Ministers.
- d) To verify if the domestic procedures and remedies in each Member State have been exhausted before applying paragraphs a) and b)

72 Davidson, pp. 18/19. Harmen van der Wilt/Viviana Krsticevic – The OAS System for the Protection of Human Rights, in: Raija Hanski/Markku Suksi (Eds.) – An Introduction to the International Protection of Human Rights. A Textbook, second, revised edition (1st edition 1997), Turku, Åbo (Finland) 2000, p. 372.

73 A dispute developed within the Commission on the distinction between individual and general cases. See: IACHR Report on the Work Accomplished by the IACHR During its Twenty-Eighth Session (Special), (May 1 through 5, 1972), OEA/Ser.L/V/II.28 doc. 24 rev.1, 24 August 1972, Original: Spanish, pp. 17-21.

74 Kokott, p. 69.

However, the Commission did not present its first Annual Report before 1970. The exhaustion of domestic remedies⁷⁵ was not strictly a categorical obstacle for the admissibility of a petition: The Commission occasionally accepted a case that did not comply with this requirement if the legal system of the concerned State was seen as not granting the necessary juridical standards as expected.

The amendment of the Statute took up the thought of the second draft of 1960, which at that time had been rejected as too far-reaching.⁷⁶ Article 53 and the following of the Rules of Procedure of 1967 standardized a jurisdictional procedure of individual petitions, which initially was limited to the rights emphasized in article 9bis (a) of the Commission's Statute. According to these articles, each person could bring a violation of the mentioned rights before the Commission. At this, the complainant did not need to be affected individually, so it represented a popular complaint procedure. In combination with Article 53 of the Rules of Procedure of 1967, Article 9bis of the Statute of 1965 essentially confirmed the existing practice of the Commission that had gone beyond its actual competence. The adoption of the local remedies rule in Art. 9bis (d) shows how the Commission developed juridical characteristics.⁷⁷

After the extension of powers in 1965, the IACHR continued working as an organ to promote human rights, and also assumed executive functions regarding the investigation of human rights violations.⁷⁸ The acceptance of the broadening of the Commission's mandate towards the individual petition right by the majority of the OAS Member States was undoubtedly a significant step in regard to their change in basic attitude.⁷⁹ The US perspective toward human rights

75 AG/RES. 447 (IX-0/79) Statute of the IACHR, Article 20 c).

76 Kokott, p. 24. The first draft Statute had included seven independent Commission members without any other professional duties and at least ten months lasting sessions per year. Moreover, that draft Statute would have enabled individuals and private groups to send petitions directly to the Commission. This was extraordinary as traditional international law only regarded States and international organizations as subjects of international law. *Ibid.*, p. 18.

77 Kokott, p. 24.

78 "In combination with the acceptance of individual petitions...[the Commission, K.D.] obtained features of an organ with jurisdiction." Kokott, p. 25 (Translation by the author). See Karel Vasak – *La Commission Interaméricaine des Droits de l'Homme*, Paris 1968, p. 59.

79 Davidson, p. 18.

protection in the inter-American system underwent an alteration during the years that followed. After a slight change in 1959, it was above all the civil rights movement in the US that followed and which contributed to a changed atmosphere through its influence in Congress. The latter permitted the Kennedy administration to express a desire to strengthen human rights at an international level as well. Later on, this found expression in the US support for Resolution XXII at the Second Inter-American Special Conference as well as through the signing of both UN human rights covenants of 1966.⁸⁰

In 1967, as a consequence of its reputation, the Inter-American Commission on Human Rights was considered a candidate for the Nobel Peace Prize.⁸¹ In the same year, the Member States approved a structural reform of the OAS with the Protocol of Buenos Aires. In short, the main reason for the Special Conference of Buenos Aires in 1967 was the regional dissatisfaction with the efficiency of the OAS institutions in reference to the handling of economic and political problems in the hemisphere.⁸² Although the conference was not very successful in addressing these issues, at least by a number of changes it did manage to equip the organization with a more efficient institutional structure. Davidson finds that the elevation of the Inter-American Commission on Human Rights from an 'autonomous entity' to an explicit 'main organ' of the OAS constituted the largest alteration effected by the Protocol of Buenos Aires. This change provided the Commission with a legal basis and gave it a precise constitutional status within the OAS system.⁸³ Until 1970 a simple conference resolution could have abrogated the Commission, but now it represented a main organ of the organization.⁸⁴

80 "In 1965, the United States was in the forefront of the movement to expand the Inter-American Commission's powers, and this support probably brought with it the votes of several other countries." Schreiber, pp. 55/56.

81 Letter from Manuel Bianchi to Carlos A. Dunshee de Abranches, Confidential, June 29, 1967 (IACHR files).

82 "The Buenos Aires reform was the product of Latin America's desire to obtain economic assistance and cooperation from the United States." Álvaro Tirado Mejía – The O.A.S. and Colombia, Colombian Ministry of Foreign Affairs, Bogotá 1998, p. 183.

83 Davidson, pp. 20/21; Kokott, p. 25. See Medina Quiroga, pp. 85-88.

84 After the entry-into-force of the Protocol of Buenos Aires, an abolition of the IACHR would have required a change of the OAS Charter. This would create the necessity to consider the special rules on the change of international treaties. See

Several authors believe that the elevation of the Commission to an OAS main organ also effected the incorporation of the American Declaration of Rights and Duties of Man of 1948 into the OAS Charter.⁸⁵ This argument is based on the fact that the Commission's Statute refers to the Declaration. In fact, in 1978 the General Assembly eventually approved the new Statute of the IACHR by explicitly declaring that for non-members of the Convention, human rights were those defined by the Declaration.⁸⁶ This is of importance because the American Declaration lacked the compulsory element that a convention would have possessed. Through the incorporation of the Commission's Statute including the reference to the Declaration into the OAS Charter, the document of 1948 was elevated in its value.⁸⁷

After 1970, in regard to the concerned rights, an unclear situation appeared: A legally binding catalogue of rights to be protected could only be reached with a dodge, by a double reference to article 150 of the Charter, article 2 of the IACHR's Statute and article 2 of the American Declaration.⁸⁸ According to article 51 of the amended Charter, the IACHR constituted an organ of the Organization of American States. Article 112 appointed the Commission to promote the observance and protection of human rights on the continent and to serve as a consultative organ to the OAS. Further, that article included a comment that an Inter-American Convention on Human Rights would define structure, competence and procedures of the Commission as well as those of a corresponding organ charged with human rights. Several authors hold that the language used in article 51 and 112 included the suggestion that after the entry-into-force of the Human Rights Con-

Kokott, pp. 25/26; Thomas Buergenthal – The Inter-American System for the Protection of Human Rights, in: *Anuario Jurídico Interamericano* 1981 (OAS, 1982), in: Buergenthal/Shelton, p. 40.

85 Davidson, p. 21; Farer – The Grand Strategy, p. 70; Kokott, p. 26.

86 AG/RES. 447 (IX-0/79): Estatuto de la Comisión Interamericana de Derechos Humanos, in: OEA/Ser.P/IX.0.2, 2 julio 1980, Volumen I: Actas y Documentos, Textos certificados de las resoluciones, p. 92.

87 Nacimiento discusses the binding character of the American Declaration and presents authoritative law, international customary law, general legal principles as explanation models to derive a binding function from the Declaration. Finally, Nacimiento concludes that a compulsory character of the American Declaration can be interpreted if the document is awarded a dynamic and potentially *law creating* effect. See Nacimiento.

88 Kokott, p. 26.

vention a *new* Commission should be established. Nevertheless, article 150 stated that the “present” Inter-American Commission on Human Rights should continue to observe the respect of human rights. This situation led to interpretations, which saw the need to create another Commission after the entry-into-force of the American Convention.⁸⁹ Consequently, as a result of the entry-into-force of the Convention, the status of the Inter-American Commission on Human Rights was discussed at the 1978 General Assembly of the OAS. Finally, the meeting decided to transfer the subject of the legal character of the IACHR in regard to the new juridical situation to the Permanent Council to study the case.⁹⁰

The IACHR eventually became an organ of both the Declaration and the Convention after the American Convention on Human Rights entered into force in 1978.⁹¹ Additionally, the amended Charter of 1967 included a long list of economic, social and cultural principles. Together with the American Convention, those principles also affected the competence of the IACHR.⁹²

In short, the Inter-American Commission on Human Rights shifted from an ‘autonomous entity’ – a role which had provided it a certain scope within the OAS – to an ‘organ *sui generis*’: Subsequently, its political independence was strengthened by its elevation to a main organ of the organization.⁹³ After the entry-into-force of the

89 Medina Quiroga, pp. 87/88, particularly pp. 113-115.

90 The Commission’s chairman, Aguilar, and its Executive Secretary, Vargas Carreño, mentioned privately their satisfaction with this decision toward the US delegation. Secretary of State, Washington, D.C., to all American Republic Diplomatic Posts Priority, Info RUDCT/AMEmbassy London Priority 6818, Subject: OASGA Summary: July 1, 1978; July 3, 1978, p. 3 (NSA files).

91 OEA CP/RES. 253 (343/78): Transition from the present Inter-American Commission on Human Rights to the Commission provided for in the American Convention on Human Rights, in: IACHR – Ten Years of Activities, p. 394. See Davidson, pp. 21, Kokott, p. 26. “Finally, by transforming the legal status of the Commission and Statute, the revised OAS Charter has also significantly strengthened the normative character of the American Declaration of Rights and Duties of Man.” Davidson, pp. 21-23.

92 “By giving the Inter-American Commission a role in the implementation of these Standards as they apply to the States parties to the American Convention, article 42 provides the legal foundation for an Inter-American system for the protection of economic, social, and cultural rights, which could have far-reaching consequences.” Buergenthal, in: Buergenthal/Shelton, p. 53.

93 Kokott, p. 27.

American Convention on Human Rights, the IACHR became an organ of the latter as well. The new Statute of the Commission, approved in 1979 at the Ninth General Assembly in La Paz, Bolivia, clarified in Article 1 that the IACHR should serve as single organ with two different procedures for the Charter and the Convention. According to Article 1 (2), the Statute protected human rights for the Member States that had ratified the Convention from the latter.⁹⁴ The definition of rights for the OAS Members, which were not part of the American Convention, was made by a reference to the Declaration of 1948.

In conclusion, there were two main elements which enabled the very creation of the IACHR (1959), the extension of its powers (1965), and its elevation to an OAS main organ (1970). These elements were first, the officially recognized reputation of human rights and later on of the Commission itself, and secondly, the naïveté of several governments expressed in the thought that such an institution would not dare to expose actual violations, at least not those of the Members that considered themselves as important. Besides the broadening of the legal position within the OAS system and the extension of the Commission's powers, it is of particular interest to review the internal and institutional development of the IACHR.

II. 2. An Institution for the Protection of Human Rights: The Inter-American Commission on Human Rights

The title of this book, which refers to the *human rights policy of the OAS*, suggests that this organization made policy with or because of human rights. Considering the fact that human rights are fixed in national constitutions, as well as the OAS Charter and the American Declaration and Convention on Human Rights, it should be assumed that exclusively juridical bodies deal with those rights. Of course, human rights is sometimes an extremely sensitive issue, therefore, *human rights policy* is a quite well known term. This leads to the controversial nature of human rights in the inter-American system. Due to this nature, the Inter-American Commission on Human Rights (IACHR) was initially created for the *promotion*, and not the expressed legal realization, of human rights. The creators of the Commission did not explicitly entitle it to make policy, but they did not

94 AG/RES. 447 (IX-0/79) Statute of the Inter-American Commission on Human Rights, Article 1.

exclude policy making from its tasks either. Accordingly, the IACHR interpreted its mandate to require an 'active' promotion of human rights. Understandably, this caused resentment on the part of several Member States that had favored simply non-confrontational promotion at a lower level. At first glance, the Commission's Statute and Regulations as well as the Declaration and the Convention seem to establish clear legal guidelines for the IACHR. However, the practical need to interpret these provisions converted the Commission's business into sometimes highly political decisions.⁹⁵ Thus, the insistence on the formal competence of the Commission, which declared it a legal institution, must be viewed in relative terms. In fact, the IACHR has always made political decisions based on juridical instruments.

In historical terms, there have often been natural predecessors to most contemporary political institutions.⁹⁶ The IACHR is an exception to this rule, partially due to the fact that in general, human rights gained significant importance at the supranational level only after 1945. Thus, the international protection of human rights represents a specific phenomenon of the post-war era. In many ways, the OAS Human Rights Commission was a type of institutional anomaly considering the organization's strong priority for national sovereignty and nonintervention. The OAS as an organization of sovereign States approved the Commission's Statute and financed its work, but this did not prevent the IACHR from accusing some of the same Member States of human rights abuses.⁹⁷ Although the emergence of the topic

95 See César Sepúlveda – The Inter-American Commission on Human Rights of the Organization of American States, 25 Years of Evolution and Endeavour, in: German Yearbook of International Law, Volume 28, 1985, p. 85.

96 Gerhard Göhler – Politische Institutionen und ihr Kontext, Begriffliche und konzeptionelle Überlegungen zur Theorie politischer Institutionen, in: Gerhard Göhler (Ed.) – Die Eigenart der Institutionen, Zum Profil politischer Institutionentheorie, Baden-Baden 1994, p. 21.

97 Bryce Wood – Human Rights and the Inter-American System, in: Tom J. Farer (Ed.) – The Future of the Inter-American System, New York 1979, pp. 120/121. David Forsythe – Human Rights, The United States and the Organization of American States, in: Human Rights Quarterly, Vol. 13, No. 1 (1991), p. 66. Sepúlveda, p. 47. Gómez adds: "International or regional organs for the protection of human rights tend to be prisoners of the unending paradox of having been created and being nourished directly by the subjects they are meant to control." Verónica Gómez – The Interaction between the Political Actors of the OAS, the Commission, and the Court, in: Harris/Livingstone, p. 173.

itself and the establishment of human rights organs in international organizations were a common post-war tendency, the creation of a human rights agency by traditionally strict defenders of national sovereignty in Latin America seems to be surprising regarding the questionable human rights practice of various authorities. Nevertheless, in the beginning, the majority of the Member States actually were convinced that such a commission would not dare to interfere in their internal affairs.

At first sight, the irony of the Commission's existence may be explained by a comparison. The role of the Commission in the inter-American system is like the one of a criminal prosecutor who is not only created but also financially sponsored by the potential delinquents.⁹⁸ Consequently, one of the standardized strategies of defense of the States where human rights violations were common was to remind the IACHR that its mere existence as well as its work was supported by the accused State.⁹⁹ The respective governments cited the simple fact that human rights violations in a State could be publicized as a proof of the existence of freedom of opinion and the free atmosphere in their countries.

In the beginning, the Commission was created as an organ with the simple task to "further the respect and promote" those rights. Notwithstanding, the Commissioners were able to expand the weak powers of the IACHR in the following years and finally made it – at first

98 As Tom Farer, former member and chairman of the Commission, puts it: "How could these conservatively dressed, middle-aged gentlemen, nominated and elected by the region's regimes, be harshly indicating various of their electors?" Tom J. Farer – The Rise of the Inter-American Human Rights Regime: No longer a Unicorn, Not Yet an Ox, in: *Human Rights Quarterly*, Vol. 19, No. 3, August 1997, p. 511. Furthermore, a statement made by the Chilean Representative at the OAS regarding the Commission's criticism on his government's referendum to approve the Constitution of 1980, clearly shows the contradictions: "¿Con qué derecho un organismo de encuesta, que depende de una entidad internacional integrada por Chile, se permite formular cargos en forma oblicua en contra de un proceso tan exclusivamente reservado a la soberanía interna, como un plebiscito constitucional?" Declaración del Embajador Pedro Daza sobre actuaciones de la C.I.D.H. y su Presidente, 1980.

99 For example, the Chilean Representative, Mario Calderón, called his government "unique" because of its high level of cooperation with the IACHR and other organizations. OEA/Ser.P/IX.0.2, 3 noviembre 1980, Volumen II, Parte II, Noveno Período Ordinario de Sesiones, La Paz, Bolivia, del 22 al 31 de octubre, 1979, Primera Comisión, p. 17.

de facto, later legally – an authentic institution for the protection of human rights.¹⁰⁰ If the Member States had known how this new institution would develop and how influential its work on human rights would be, it is likely many would have preferred not to create such a commission – some of the accused States might even have opted for a ‘postnatal abortion’ of the unwanted child they had carried in 1959.¹⁰¹

Although the OAS Member States did not successfully cut back the Commission’s role but rather expanded it, as seen in the previous chapter, there were other obstacles for the IACHR’s work. Probably one of the most influential factors for the Human Rights Commission was its financing. The percentage of the OAS budget spent for needs of the IACHR – save some minor exceptions – grew constantly between 1960 and 2000. Besides the principle expenditure for the staff salaries, the main expenses were the costs for on-site observations. The Commissioners themselves only received honorariums.¹⁰² The evolution of the Commission’s financial resources can be divided in different phases. Between 1970 and 1977, steady growth at a moderate level continued as in the decade before. During the years of the Carter administration (1977-81), the budget was expanded, while the years from 1981 to 1988, the budget was stabilized and even temporarily reduced. From 1989 onwards, the IACHR’s budget was increased, and this practice continued into the last decade.

Interestingly enough, while the budget of the Commission continuously grew, the overall budget of the OAS underwent different developments.¹⁰³ To this end, a former official of the Commission emphasizes the paradox between the decreasing OAS budget and the increasing resources and staff of the IACHR.¹⁰⁴ This was due to the increasing importance of the human rights issue and the reputation the

100 “Moral interdependence of neo-Iberian as well as Anglo Saxon elites, moral leadership mostly by officials of the Inter-American Commission and Court plus the representatives of certain smaller states, and occasional US influence all pushed the declaratory regime toward strong promotion and weak protection at the same time.” Forsythe, p. 96.

101 See Tom Farer – The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox, in: Harris/Livingstone, p. 35; Christina Cerna – The Inter-American Commission on Human Rights: Its Organization and Examination of Petitions and Communications, in: Harris/Livingstone, p. 69.

102 AG/RES. 447 (IX-0/79), Statute of the IACHR, Article 13.

103 See Budget Table, Annex.

104 Interviews.

Commission developed during the years. But the growth of the Commission's budget was also a result of the fact that it was more responsive to political pressure from the US government and its financing than the other political organs of the OAS. In accordance, the major contributor to the OAS, the United States, provided additional money specifically to the IACHR, especially during the Carter administration.¹⁰⁵ It was no longer functional for the US foreign policy to invest in the general competence of the OAS since these funds would most probably be used in unpredictable ways by the political organs (where the US was highly outclassed and out-voted). That was not the case with human rights, since it was a focused type of activity it could be and still is highly dependent on aid from the US to function.

During the 1970s, the Commission received a continuously growing budget. In 1974 – a crucial year for the Commission because of the transcendental Chilean case – Executive Secretary Luis Reque deplored the reductions proposed by the Program-Budget Subcommittee and called for a partial or entire restoration of the budget originally requested by the IACHR.¹⁰⁶ Subsequently, between 1974 and 1976 the Kennedy Amendment initiated by US Senator Edward Kennedy resulted in an increase of the IACHR budget to the amount of \$102,000.¹⁰⁷ In 1975, the Chilean representative criticized the amendment as a hitherto unknown attack on the organization's autonomy.¹⁰⁸ Unlike other OAS entities, the Commission had a quite good reputation in Washington, D.C.¹⁰⁹ As a result, the US earmarked a certain amount of its OAS payment for the IACHR. Although the Chilean protest probably derived mostly from hypocrisy, article 118 of the

105 The Commission also received other donations, for instance a \$7,500 contribution from France in 1991. Memorandum from Edith Márquez Rodríguez, to James B. McCeney, Treasurer of the OAS, September 5, 1991 (IACHR files).

106 IACHR – Report on the Work Accomplished by the IACHR at its Thirty-Second Session (April 8-18, 1974), OEA/Ser.L/V/II.32 doc.31 rev.1, 20 February 1975, Original: Spanish, p. 58.

107 Executive director Luis Reque thanked Senator Kennedy for his efforts to strengthen the Commission. Letter from Luis Reque, Executive Secretary of the IACHR, to US Senator Edward M. Kennedy, Washington, D.C., November 12, 1975 (IACHR files).

108 OEA/Ser.G, CP/ACTA 180/75, 19 de noviembre 1975, pp. 28-37 (here: p. 35). See Wood, pp. 143/144.

109 David Forsythe – Human Rights and U.S. Foreign Policy. Congress Reconsidered, Gainesville (Florida) 1988, pp. 133; 19/20.

OAS Charter determines the budgetary autonomy of the organization. In technical terms, the diplomatic demand by the US might be considered as a sort of unilateral imposition. US Congress tied the allocation of "...special funding to the I.A.C.H.R. as a gesture of support for human rights within the O.A.S." The Permanent Council of the organization approved the special contribution from the United States to the IACHR on October 5, 1976. Eventually, in 1976, the Program and Budget Committee of the organization accepted the United States' offer to make up the 15 percent that had been deducted previously.¹¹⁰ The Commission duly thanked the US government for their financial support.¹¹¹

As a matter of fact, the financing of the OAS depended mainly on the US, which contributed two thirds to the OAS budget. Therefore, the increased budget of the Commission could be interpreted as the political will of the US to strengthen the Human Rights Commission in particular. This is of importance because the OAS – especially in the United States – has always been criticized for its high costs for programs that were considered highly bureaucratic and hardly effective. In addition, the OAS staff was steadily reduced while the Executive Secretariat hired new personnel and received more resources.

This clearly hints at the US position towards the OAS and the IACHR: the OAS was seen as an expensive, not very effective but necessary institutional link with Latin America, while conversely the Commission was perceived as helpful and effective. Moreover, the financial support for the IACHR helped improve the reputation of the entire organization. Furthermore, the United States saw the Inter-American Commission on Human Rights as a cheaper and more politically useful instrument to implement its human rights policy. Such a policy carried out unilaterally by the US would have caused harsh criticism but this was avoided because of the multilateral approach.¹¹²

110 Letter from Charles Moyer, Executive Secretary ad-interim, to Andrés Aguilar, Chairman, Washington, D.C., December 8, 1976 (IACHR files).

111 Letter from Andrés Aguilar, Chairman of the IACHR, to Henry A. Kissinger, US Secretary of State, Washington, D.C., November 30, 1976 (IACHR files).

112 Uruguay's government, for instance, held that the US pressured the IACHR to visit Uruguay and spoke of "interventionism". República Oriental del Uruguay, Ministerio de Relaciones Exteriores – Los Derechos Humanos en Uruguay, respuesta del Gobierno al Informe de la Comisión Interamericana de Derechos

The most important increase in the budget took place in 1977 when US president Carter proclaimed his human rights policy. The US provided more financial contributions to the IACHR “...because the Commission was so seriously under-funded...”¹¹³ In 1977, the new Executive Secretary of the Commission demanded more money for on-site observations, new resources and more staff members. In accordance, he requested additional \$274,600 for 1978, and \$248,600 for 1979.¹¹⁴ Notwithstanding, the IACHR budget for the fiscal year 1978 was raised to \$894,000 and for 1979 to \$837,600. This meant an increase of 160 percent in comparison with the previous two-year budget.¹¹⁵ The extraordinary rise of its financial resources enabled the Commission to hire another five lawyers. Further, the IACHR established a specialized library and documentation center. In 1977, the IACHR Secretariat was equipped with a computer system.¹¹⁶ Eventually, thanks to the financial support of the US government, the Commission obtained an important logistical improvement through a modern data system. This meant a significant advantage, especially in consideration of the extraordinary large number of cases handled by the Commission since the mid-seventies.¹¹⁷ Due to the increasing staff, the Commission also needed larger offices.¹¹⁸ The enlargement of the

Humanos, de fecha 24 de Mayo de 1977, Montevideo, Setiembre de 1977, pp. 14/15.

113 Department of State, INR Weekly Highlights of Developments in Human Rights, No. 6, May 23, 1977, p. 3 (NSA files). The Brazilian government complained about this unilateral action.

114 Palabras pronunciadas por el Secretario Ejecutivo de la CIDH, Dr. Edmundo Vargas Carreño, ante la Comisión de Programa-Presupuesto, el día 12 de octubre de 1977 (IACHR files).

115 IACHR – Annual Report of the IACHR 1977, OEA/Ser.L/V/II.43 doc. 21, 20 April 1978, Original: Spanish, p. 11.

116 Letter from Alejandro Orfila, Secretary General of the Organization of American States, to Andrés Aguilar, Chairman of the IACHR, Washington, D.C., July 12, 1977 (IACHR files).

117 Further, new ‘Wang Word Processing work stations’ were installed in 1983. Memorandum, from David Padilla, to: Staff of the IACHR, Washington, D.C., March 6, 1983. In 1988, the old Datapoint system was replaced by a new Computer system. Memorandum, from Edmundo Vargas Carreño, to the IACHR personnel, Washington, D.C., August 31, 1988. In 1992, finally an internal communication computer network was installed (IACHR files).

118 Letter from Edmundo Vargas Carreño to Andrés Aguilar, OAS Memorandum, 8 de noviembre de 1977 (IACHR files).

Secretariat's staff required even more additional financial resources. Also, money was spent on fellowships, exchange programs and seminars in Europe, the organization of congresses and seminars all over Latin America, and particularly on on-site observations and other travel expenses of lawyers and members. By the end of 1983, the IACHR Secretariat moved to the OAS Building on Washington, D.C.'s F Street, a few blocks from the White House, where it has been located until today. But besides these mainly administrative improvements, the most important advantage of the increased financial resources was that it enabled the Commission to undertake more on-site observations.¹¹⁹

In the 1980s, the withholding of US funds to the OAS during the Reagan administration exceedingly damaged the organization and the human rights system.¹²⁰ While US president Reagan was in office, the Commission's budget did not grow significantly and did not experience the constant and proportional rise of the foregoing years and the years following 1989. In 1989/1990, the resources of the IACHR were again expanded, this time by the Bush administration. The percentage of the OAS Regular Fund attributed to the IACHR fell from an average of 1,73 percent (1978-1981) to an average of 1,67 percent during the Reagan years (budgets for 1982-1989).

The development of the number of staff lawyers in the Executive Secretariat probably provides a more comprehensive view of the financial situation. Before the Carter administration took office, the Secretariat had six attorneys. Between 1978 and 1981, the number of lawyers grew from six to 10 due to the increased budget. In contrast, in 1982, there were still ten professionals, but between 1983 and 1987 the number was reduced to six. In light of the Reagan years, this shows that the IACHR did not have the resources to hire new staff members, and it was forced to dismiss some lawyers. The IACHR complained about the reduction of annual meetings, its incapacity to prepare more reports, to handle more individual cases, and to conduct on-site investigations. Likewise, the next years witnessed frequent objections brought up by the IACHR chairpersons who deplored the re-

119 IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, OEA/Ser.L/V/II.47 doc. 13 rev. 1, 29 June 1979, Original: Spanish, p. 12.

120 Forsythe, p. 86.

duced staff.¹²¹ Consequently, chairwoman Gilda Russomano requested two new lawyers to compensate for the lack of the Secretariat's staffing capacities.¹²² Her request was heeded: in December 1987, two vacancies were filled. As an illustrative agenda point, in 1989 chairman Valladares Lanza proposed to undertake a "critical self-evaluation of Commission's activities in a period of financial difficulties."¹²³ In general, the IACHR budget in the 1980s did not leave much space to hire new lawyers. Further, unfortunate events such as the nomination of staff lawyers to take over government positions demonstrated that the Commission's Secretariat had to struggle with personal shortcomings. This must have affected the Commission's work at that time.

Besides the budgetary question, it is important to discuss the members who were part of the Commission in order to provide an overview of the personnel of the IACHR. Article 3.1. of the Statute allowed the governments of the OAS Member States to nominate own candidates as well as nationals of other countries belonging to the or-

121 See Annual Report of the IACHR 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985, Original: Spanish, p. 18. In 1985, chairman César Sepúlveda expressed his worries about the planned reductions to the IACHR budget. Letter from César Sepúlveda to Edmundo Vargas Carreño, Bonn, June 4, 1985; Letter from César Sepúlveda to Secretary General João Baena Soares, Bonn, June 1, 1985. As a result, the IACHR cancelled the Rómulo Gallegos fellowship program in 1984 and 1985. In 1986, Sepúlveda's successor, Luis Adolfo Siles Salinas, had to deplore that of the reduced staff – at that time, nine lawyers worked at the Secretariat – one died in an accident, another was named Vice Minister of Foreign Affairs and a third was promoted to an important post in the General Secretariat and finally, a fourth attorney retired. Palabras del Dr. Luis Adolfo Siles Salinas, Presidente de la C.I.D.H. en la sesión del 68° período de sesiones de la CIDH, p. 4 (IACHR files).

122 Due to a budgetary cut of the OAS, the Commission lost four positions (two lawyers and two administrative posts) between 1981 and 1987. In late summer of 1987, Chairwoman Russomano and the Executive Secretary met with OAS Secretary General Baena Soares to discuss the financial calamities of the IACHR. Baena Soares, however, distracted hopes that he could help the Commission in times of serious financial problems of the organization. Discurso de la presidenta de la Comisión Interamericana de Derechos Humanos, Dra. Gilda M.C.M. de Russomano, ante la Comisión Preparatoria del Décimoséptimo Período Ordinario de Sesiones de la Asamblea General, el día 23 de septiembre de 1987; Letter from Gilda Maciel Correa Russomano to George McKenzie, Chairman of the Program-Budget Committee, Permanent Council, April 1, 1987 (IACHR files).

123 Letter from Leo Valladares Lanza, to Edmundo Vargas Carreño, Tegucigalpa, March 8, 1989 (IACHR files).

ganization. Each government could propose up to three nominees, while at least one of the candidates was required to be of a different nationality than the proposing State. The seven members of the IACHR must all be of different nationalities.¹²⁴ While the Member States occasionally presented up to three candidates during the 1960s¹²⁵, several governments proposed only one own nominee for the IACHR in the subsequent decades.¹²⁶ According to Sepúlveda and the reviewed files, a sort of lobbying among the OAS Member States for their own candidate was the usual technique.¹²⁷

The Meeting of Consultation of 1959 determined that seven Members should be elected to form the Inter-American Commission on Human Rights. The conference did not provide an explanation for this number, but it seems to be a proof that the Commission should not be created as an intergovernmental institution.¹²⁸ Further, an enlargement of the Commission would certainly have complicated the difficult decision-taking processes to an unbearable extent. Reportedly, this 'small-group dynamic' permitted the members to get to know each other well.¹²⁹

It was designed so that the seven members of the IACHR should be elected as individuals and not as representatives of their corresponding governments that had to propose them. They should rather represent all Member States and act in the name of the Organization of American States. Since the adoption of its new Statute in 1979, it was the Commission and not its individual members which represented all

124 AG/RES. 447 (IX-0/79), Statute of the IACHR, Articles 3 and 7.

125 In 1968, the governments of Brazil, Chile and Mexico obviously cooperated in regard to the proposal of Commission members: all three States presented the Brazilian Carlos Dunshee de Abranches, the Mexican Gabino Fraga and the Chilean Manuel Bianchi as their candidates. All three candidates were elected – also thanks to the trilateral alliance.

126 LeBlanc holds: "This is not to say, however, that the Council has been forced to choose from among less qualified individuals: political considerations could be expected to influence the outcome of the elections no matter how long the list of nominees would be." LeBlanc, p. 59.

127 "The established praxis is that the ministry of foreign affairs of the country concerned seeks support in advance for the candidate, so that he may be presented to the General Assembly with the probability of success." Sepúlveda, p. 53.

128 In contrast, the European Human Rights Commission was composed of a representative from each Member State.

129 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

Member States.¹³⁰ The members were not required to take an oath and there were no regulations until 1979 which would have prohibited their participation in governmental activities. This could feed the assumption that the impartiality of the members was not institutionally assured. For LeBlanc, however, there was no sign that the Commission as a whole did favor or discriminate any particular government.¹³¹ However, this statement to some extent should be revised after analyzing the Commission's activities during the 1980s.

Since 1960, it is set up so that six months before new elections the OAS Secretary General requests the representatives of the Council, respectively since 1970 those of the Permanent Council, to present their candidates. In case of death or resignation of a Commissioner, the Commission's chairman is obliged to immediately inform the Secretary General who then imparts to the governments. Subsequently, the latter must propose a new nominee within a month. Then, the vacancy is not filled if there are less than six months until the next regular elections.¹³² For example, a month after Commissioner Carlos A. Dunshee de Abranches died in August 1983, Prof. Dr. Gilda Maciel Corrêa Meyer Russomano was elected to succeed her deceased Brazilian compatriot as a Commission member.

Since the adoption of the new IACHR Statute in 1979, the members of the Commission have been elected for a period of four years with the possibility of one re-election.¹³³ During the 1960s and 1970s, this limitation to the re-election was not applied yet, which explains the long terms of office of some members.¹³⁴ Although there are some provisions in the IACHR Statute of 1979 that offer the possibility of depriving a Commissioner due to his/her inappropriate behavior, such a measure has not been used yet.¹³⁵

130 AG/RES. 447 (IX-0/79) Statute of the Inter-American Commission on Human Rights, Article 2. 2.

131 LeBlanc, p. 51-53. It is necessary to know that LeBlanc's inquiry ends in the mid-seventies. Also Nacimiento states that since its creation the IACHR has employed an objective and systematic procedure, which not only served to control the human rights situations in a State but also to guarantee the protection of the individual. Nacimiento, p. 104.

132 AG/RES. 447 (IX-0/79), Statute of the IACHR, Article 11.

133 AG/RES. 447 (IX-0/79), Statute of the IACHR, Article 6.

134 See Appendix.

135 See Medina Quiroga, pp. 120/121.

Furthermore, the Commission elected a chairman and since the entry-into-force of the new Statute in 1980, a first and second vice chairman. Since 1980, the chairman's term was limited to a year in office – also a result of the experience with unsatisfying long-term presidencies in the 1960s and 1970s. The chairperson presides over the Commission, leads the sessions, and represents the IACHR before all other OAS organs and other entities.¹³⁶ In 1985, the regulations were modified with regard to internal discussions. One new aspect was the prohibition of participating in a discussion, an investigation, or decision-making process if the considered members were nationals or permanent residents of the State that was generally or specifically regarded by the Commission, or if the members were accredited to or in charge of a special mission. Also if they were acting as diplomatic agents on behalf of the concerned State or if “...they have participated in any capacity in a decision concerning the same facts on which the matter is based or have acted as an adviser to, or representative of, any of the parties involved in the decision.”¹³⁷ This new regulation apparently derived from the experience with certain members during the previous years.

The work of the Commissioners is only a part-time job, though an unusually progressive draft statute of 1959 assigned full-time members. This could be interpreted either as a weakness or an advantage for the Commission. The fact that the members only met for a few weeks – according to article 15 of the Statute, eight weeks – at ordinary and extraordinary sessions during a year leads to the assumption that those sporadic meetings must have influenced the interpersonal communication structures. At the few meetings, there might have been the problem to feel and adjust the relations between the members until the communication was ‘normalized’. On the other hand, it might be concluded that the professions and different impressions gained by the Commissioners in their countries and elsewhere helped them to view the reality not only from an ‘isolated’ Commission’s perspective. The rare meetings could also have been an advantage and the normal life outside the IACHR a ‘refreshing’ factor for the Commission’s functioning.¹³⁸

136 AG/RES. 447 (IX-0/79), Statute of the IACHR, Article 14.

137 Medina Quiroga, pp. 121, 122.

138 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

The Commission members were in the most cases extraordinarily busy personalities who worked as attorneys, diplomats or businessmen. Therefore, the very tense timetables, including urgent meetings and decisions outside the Commission, might have had negative affects due to the required amount of attention and to the receptivity and patience of the Commissioners. Certainly the members of the Commission were people used to working under stress and time pressure, but the question must be raised if the tight timetable did not constitute a problem for the decision-making processes in such a sensitive field as human rights. For certain situations, the necessary sensitivity could have been disregarded due to the density and lack of time of the Commission's sessions, which sometimes went from early in the morning to late at night.¹³⁹

According to former IACHR member Farer, the meetings of the Commission were "extremely polite". He compares the conversation procedure with the English parliamentary style. Understandingly, Spanish was the prevailing language during the Commission sessions. In the first decades, the dominance of Spanish was not a serious problem for non-Latin Americans because overall the US Commissioners and the Brazilian members understood Spanish. Conversely, some Latin American members had problems speaking or even understanding English.¹⁴⁰ The euphemistic terminology "entiende el inglés" (understands English) that appeared on several curriculum vitae of Latin American nominees actually merely served to circumscribe the factual lack of a workable proficiency in English. Likewise, in the 1980s there were members from the Caribbean who did not speak any Spanish – obviously, this must have complicated the discussions and the decision-making process in which the Commissioners sometimes argued on small items such as adjectives.¹⁴¹

139 Interviews.

140 During the interview with Dean Farer, the author was particularly interested in the forms used by the Commissioners because American English usually is perceived as a very direct, even "undiplomatic" language. In contrast, Latin American Spanish has the reputation – especially in diplomacy – to tend to circumscribe issues and employ infinite polite phrases. Farer, however, liked the mutual treatment during the Commission sessions – with diplomatic politeness – while he preferred "...to tell the truth in the most blunt way, and the Commission reports are very blunt." Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

141 Interviews.

It is necessary also to examine the Commissioners' background: From which professional and social origin were the majority of the Commission members? In the 1970s and 1980s, the members of the Inter-American Commission on Human Rights came mainly from the big Member States of the OAS. This is not surprising since the number of experts in human rights matters in the Central American or the Caribbean States was rather small. However, during the 1980s, more representatives of 'small' countries became members of the IACHR. A sort of unofficial 'regional quota' was established that ensured that there was a Commission member from Central America and later also from the Caribbean. All members possessed an academic degree, the most were jurists with a doctoral degree.¹⁴² However, the few members who did not enjoy a juridical education showed a particular interest in questions of international relations and international law within their disciplines – mostly political science and diplomacy. Many Commissioners taught law as college professors or continued to work in the diplomatic service. The overwhelming majority of the Commissioners were, at the time of their elections, older than 40 years, and in many cases over 60 or 70 years. Thus, each Commissioner brought a large life experience from different fields, and most likely a more conservative attitude considering that stereotypically, an older person is often more old-fashioned set in their ways. In addition, among the Commissioners were an ex-president, Prof. Rómulo Gallegos from Venezuela,¹⁴³ and several former ministers. The curriculum vitae of the Commissioners include substantial listings of national and international prizes and awards for their professional or academic achievements.

All of these aspects lead to confirm that the members generally fit the Statute's requirements. These provisions requested "persons of high moral character and recognized competence in the field of human

142 It should be mentioned that the academic title of a 'doctor' in each State has a different rank. For instance, lawyers are usually called 'doctor' in Latin America though they did not present a doctoral dissertation.

143 According to Tirado Mejía, Gallegos was elected as the Commission's first president in 1959 because former Colombian president, Eduardo Santos, had to refuse the Commission's chairmanship for personal reasons. Álvaro Tirado Mejía – *The O.A.S. and Colombia*, Colombian Ministry of Foreign Affairs, Bogotá 1998, p. 252.

rights” to become Commissioners.¹⁴⁴ However, the members’ dedication to human rights was quite different.¹⁴⁵ As former Commissioner Farer points out, the membership was “a commitment, not a job”.¹⁴⁶

From 1960 until 1991, only three women were elected to become Commissioners, and only Gilda Russomano from Brazil was elected Chairwoman. The dominance of men is reflected in the entire organization and makes a comparison with the social structures in the Member States inevitable. The question as to which extent the male perspective of this “boys club” influenced the Commission’s decisions in regard to women’s rights, or the special implications of human rights violations against women, is debatable.¹⁴⁷ It is obvious that at least in certain situations, the majority of the male Commissioners lacked sensitivity to the special conditions under which women experienced repression. This is reflected in the marginalized mentioning of gender-specific abuses in the IACHR reports. The fact that women are differently and particularly affected by human rights violations – socially as mother, wife¹⁴⁸, and concretely as victim of sexual violence and rape – is not expressed in the reports reviewed for the period of the present investigation. This unawareness can be explained by the dominant male perspective of the Commission, but also with the perception of women’s rights as ‘luxury rights’, which were considered to be important only in times where massive and systematic violations ceased. In sum, Medina concludes that between 1960 and 1994, the IACHR did

144 AG/RES. 447 (IX-0/79), Statute of the IACHR, Article 2. 1.

145 Interviews.

146 Interview with Dean Tom J. Farer, Denver, Colorado, August 30, 1999.

147 It is always necessary to distinguish between human rights of women and women’s rights. In general, women are differently affected by human rights violations than men. Besides typical violations like murder, torture, forced disappearance, women often suffer rape, sexual encroachment and sexual degradation and were therefore particularly affected by state and para-state terror. In addition, women were attributed an extraordinary difficult social role after the disappearance or definitive death of their relatives. In their roles as mother, wife or daughter, women found themselves in the position to care about broken relatives, which meant a particular difficult task because it set them – besides the immediate burden – also under social pressure.

148 There are some exceptions, however. For instance, the Argentine Report did mention the psychological and social consequences of disappearances for the victim’s wives and children. Inter-American Commission on Human Rights – Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49 doc.19 corr.1, 11 abril 1980, Original: Spanish, new edition 1999, p. 137.

not regard the plight of women in the hemisphere sufficiently important to deal with the issue – neither in relation to its promotional nor its supervisory performance.¹⁴⁹

Besides the prevailing male composition of the IACHR during these years, another characteristic shared by most members of the Commission was their social background. The majority descended from relatively wealthy families. This raises the question as to what extent the social-cultural background of the Commissioners affected their ability to perceive and judge the reality of the needy. Certainly, it must have been very difficult for a person with a background of economic comfort and security to completely seize the situation of the poor majority of the population that had to fight for survival every day.¹⁵⁰ The mentioning of the economic, social and cultural conditions or rights in the IACHR reports is subject of chapter II. 3.

It is relatively difficult to make out the political orientation of the Commission members and their potential influence on the decisions of the IACHR because the minutes of the proceedings are not only confidential OAS documents but restricted exclusively to the Commission members. In general, the Commissioners could be described as conservative-moderate and divided into the categories center-right and center-left. The fact that governments proposed the candidates ensured that no real extremists were elected. On the other hand, and this should always be taken into account, the candidates chosen by the governments usually did not completely differ in opinion from the latter. Although the Commissioners formally served in their personal capacity and not as representatives of their respective governments, this requirement lost some validity in reality. The fact that a seven-member entity was more vulnerable to the influence of the governments of big Member States must be considered as well.¹⁵¹ For instance, former Commissioner Farer described the Commission of

149 Cecilia Medina – The Inter-American Commission on Human Rights and Women, with Particular Reference to Violence, in: *The Role of the Nation-State in the 21st Century. Human Rights, International Organizations and Foreign Policy. Essays in Honour of Peter Baehr*, edited by Monique Castermans-Holleman/Fried van Hoof/Jacqueline Smith (SIM), Dordrecht (Netherlands) 1998, pp. 117, 124.

150 Of course, the author himself is not able to perceive the reality of the poor people entirely because of a different *Sitz im Leben* (place in life).

151 Kokott, p. 33.

1976 as composed of members, deriving from the national ‘establishment’ and selected by their governments, who found it difficult to condemn governments and easily rationalized special measures adopted by States¹⁵²: “The members themselves were people whose “moderation”, “respectability”, and sensibility to the OAS tradition of “live and let live” seemed confirmed by the very fact of their nomination.”¹⁵³

In accordance, the Commission members can be divided into different groups: traditionalists, progressive activists and irresolute members. Individuals that maintained a ‘traditional’ Latin American human rights diplomacy, which meant not to blame governments openly, usually confronted the ‘progressive’ activists that were determined to criticize States publicly, if necessary. The third group of waving members mostly decided upon a case-to-case basis, which preponderantly also depended on the other groups’ ability to convince them. In the 1970s, the activist faction was able to dominate the IACHR and therefore succeeded in improving the reputation of the Commission. Unfortunately, the Commission of the 1980s cannot be described as dominated by successful activists with regard to the visible and challenging Central American conflicts. The fact that the performance of the IACHR in the foregoing decade had provided the Commission highest respect at the regional and international level was not especially advantageous for the institution in the Central American civil wars of the 1980s. The apparent interest of the US not to expose the human rights issue in these conflicts or even to use it for its purposes might also have found expression in the IACHR’s handling of the Nicaraguan and Salvadoran cases. In contrast, it was also the United States that strengthened the Commission during the 1970s – even before the Carter administration took office.

In short, the governmental influence on the members was in some cases substantial while in other cases of less importance, but in general, it did not necessarily constitute the major problem for the IACHR. Nevertheless, it would be naive to expect only independent and impartial personalities in the Commission as required by the Statute. For instance, after the coup in his country in 1973, the Chilean

152 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

153 Tom J. Farer – *The Grand Strategy*, p. 92, emphasis in the original.

member abandoned his impartiality.¹⁵⁴ Further, the Salvadoran member Francisco Bertrand Galindo served at the same time as ambassador of his country to Guatemala – making it unlikely that he could act as an independent individual as required by the Commission’s Statute.¹⁵⁵ Bertrand Galindo, who was one of the most controversial members in regard to his integrity, was elected before the new Statute of 1979 entered into force.¹⁵⁶ The modification of the Commission’s Statute in 1980 considered the exercise of any function or position which could affect the independence or impartiality of a Commissioner as incompatible with the membership.¹⁵⁷ This was clearly directed against members who also served as representatives of their governments. Another example is the Brazilian Commissioner who was presented by the military government. In fact, he dissented on many critical resolutions. Also, Mexican Commission member Gabino Fraga frequently held that the IACHR was an international and by no means a supranational organ; therefore the word of a government should weight more.¹⁵⁸

Although several members’ integrity was not entirely ensured, the Commission as a whole did show a remarkable degree of impartiality during the 1970s and with limitations also in the 1980s. The fact that many Commissioners were conventional in their methodology and also with their political convictions, gave the Commission a certain reputation of seriousness in the more traditional diplomatic environment and enabled it to improve its good reputation.

154 Interviews.

155 Interestingly, it was also the then Permanent Representative Bertrand Galindo who sent the invitation to the IACHR for the on-site investigation in El Salvador that took place in 1978. See: Christina Cerna – The Inter-American Commission on Human Rights: Its Organization and Examination of Petitions and Communications, in: Harris/Livingstone, p. 71.

156 Interviews.

157 IACHR – Annual Report of the IACHR 1980-1981, OEA/Ser.L/V/II.54, doc. 9 rev. 1., 16 October 1981, Original: Spanish, p. 10 (Article 8 of the new Statute). Moreover, Article 10 provided sanction options if Article 9 was not respected. AG/RES. 447 (IX-0/79): Estatuto de la Comisión Interamericana de Derechos Humanos, in: OEA/Ser.P/IX.0.2, 2 julio 1980, Volumen I: Actas y Documentos, Textos certificados de las resoluciones, p. 94.

158 See, for instance: IACHR Report on the Work Accomplished by the IACHR During its Twenty-Eighth Session (Special), (May 1 through 5, 1972), OEA/Ser.L/V/II.28 doc. 24 rev.1, 24 August 1972, Original: Spanish, p. 17.

In summary, the Commission was constituted by preponderantly male and mainly conservative personalities who – save some exceptions – did professionally regard human rights as an important issue or in some cases even as a personal commitment.¹⁵⁹ Generally, the dynamic or, respectively the lack of activism within the Commission determined its performance during the 1970s and 1980s.

On the whole, the US Commissioner potentially had a crucial position in the IACHR due to the importance of the United States in the OAS; as former Commissioner Tom Farer states: “The American is always elected.” Accordingly, a Commission without a US American member would presumably have less prestige, and with the US member it demonstrated the US commitment to the system.¹⁶⁰ For the period of this investigation this meant that Robert Woodward, Tom J. Farer, Bruce McColm and John Stevenson were entrusted with the important responsibility of giving the Commission authority. If the Commissioner of US origin was weak, less informed or less interested in human rights matters, this also affected the functioning and above all, the impact of the IACHR and its activities.

In general, Robert Woodward’s membership (1972-76) was helpful but less influential for the whole Commission. Woodward, who served as US Ambassador to Costa Rica, Uruguay, Chile and Spain between 1954 and 1965, supported the decisions by the activists Justino Jiménez de Aréchaga from Uruguay and the brilliant Venezuelan diplomat Andrés Aguilar Mawdsley. Woodward described himself as interested but as Commissioner more supportive of the dynamic group around Aguilar than pioneering.¹⁶¹

In contrast, Woodward’s successor, the international law expert Tom J. Farer, became one of the most influential Commission members during its prominent period. He provided a quite critical approach. Due to his comments, Farer, who served between 1976 and 1983, formed a dynamic trio together with the Commission’s chairman, Andrés Aguilar, and the Costa Rican member Volio Jiménez, supported by the Chilean Executive Secretary Edmundo Vargas Carreño. Farer introduced the topic of economic, social and cultural rights

159 Accordingly, regarding the implied institutional threat of the Commission to treat the governments not too harshly, Bryce Wood concludes: “The IACHR is no pussyfooting or whitewashing organization.” Wood, p. 128.

160 Interviews.

161 Interview with Robert Woodward, Washington, D.C., December 6, 1999.

to the Commission reports. He was nominated by the Republican Ford administration. Despite his differences with the then Secretary of State, Henry Kissinger, he gained support of the State Department.¹⁶² The fact that the Democratic Carter administration supported Farer's re-election seems to contradict the simple assumption that all Commissioners were merely representatives of their governments. Farer, however, had an impact on the Commission's work because he was dedicated to the issues, as were Aguilar and to some extent the former Costa Rican Minister of Education and the Presidency, Volio Jiménez. This impact found expression in the recognition of the Commissioners who elected Farer to become the first chairman of the IACHR with US citizenship. During his term as a member but especially as head of the Commission, Farer published several critical articles on the situation in Latin America that provoked harsh replies by the concerned governments.¹⁶³ Farer responded to one critical comment on his performance that the Commission's task to expose discrepancies between constitutional rights and the reality in OAS countries would lead to "unjust, ill-informed, even malicious criticism."¹⁶⁴

When Reagan became US president in 1981, the support for human rights matters in general, and for institutions that blamed allied right-wing governments for their abuses in particular, diminished. Farer stated that "...our relations with the Reagan administration people were not amicable..."¹⁶⁵ and he himself was quickly seen as an obstacle for the new foreign policy approach of the US government.¹⁶⁶ This tendency was manifested in the nomination of one of the few non-lawyers to become Farer's successor.

Bruce McColm, a journalist and human rights activist at the conservative Freedom House, did not have such an impact as did his

162 Interview with William D. Rogers, Assistant Secretary of State for Inter-American Affairs 1974-1977, November 9, 1999, Washington, D.C.; Interview with Farer, Denver, Colorado, August 30, 1999.

163 For example, see: Declaración del Embajador Pedro Daza sobre actuaciones de la C.I.D.H. y su Presidente, 1980; See: OEA/Ser.G/CP/ACTA 455/81, 6 de mayo 1981, Consejo Permanente – Acta de la Sesión Ordinaria celebrada el 6 de mayo de 1981.

164 Tom J. Farer, Statement on Pedro Daza's declaration, 1980.

165 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

166 Reportedly, the Reagan administration sought to oust Farer as Commissioner as early as in 1981.

predecessor. McColm, member from 1984 until 1988, focused mainly on human rights abuses committed by the left-wing Sandinista government in Nicaragua. His concentration on events in Nicaragua might have contributed to the negligible covering of the massive abuses in El Salvador. McColm could be described as integer though there were critics who called him disparagingly 'Reagan's candidate'. McColm himself ascertained that the US authorities assured him to act independently and without any obstructions of the Reagan administration.¹⁶⁷ While there are voices confirming that McColm had an authentic human rights commitment, for Farer he was an inappropriate candidate and "...a right-wing ideologue on matters in Latin America"¹⁶⁸ Likewise, Bonner criticized his nomination as an "affront to the organization" and cited the *New York Times* that saw him as a "polemicist who has dealt almost exclusively with the sins of the left."¹⁶⁹ In any case, the reading of his articles on Central America feeds the impression that he perceived the situation in the isthmus from a Cold War perspective.¹⁷⁰ Moreover, McColm's young age –he was 33 years old when elected – might have affected his acceptance by the older Commissioners. Although McColm was a capable human rights activist, the fact that the Reagan administration proposed him and the fact that he was not a lawyer weakened the important impact of the role of the US Commissioner at that time. He did not seek to serve for a second term, probably a sign of his position in the IACHR.¹⁷¹

McColm's successor, John Reese Stevenson, president and principal partner of the New York based law firm Sullivan & Cromwell, as well as special advisor of several US delegations, had served as the principal lawyer for the State Department. For a former US diplomat to the OAS, Stevenson had a great dignity and an 'immense moral weight'.¹⁷² Stevenson could be described as an honest person with interest in regards to human rights. But the argument with which he

¹⁶⁷ Interviews.

¹⁶⁸ Interviews; Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

¹⁶⁹ Raymond Bonner – Weakness and Deceit. U.S. Policy and El Salvador, New York 1984, pp. 247/248.

¹⁷⁰ See, for instance, R. Bruce McColm – Central America: The Larger Regional Scenario, in: Walter F. Hahn (Ed.) – Central America and the Reagan Doctrine, Lanham/London 1987, pp. 1-27.

¹⁷¹ Interviews.

¹⁷² Interviews.

withdrew from the Commission, his age, and the health problems he suffered, contributed him maintaining a more subordinated role.¹⁷³ The fact that neither McColm nor Stevenson became chairman of the Commission supports the thesis that both did not act in a way that gave members sufficient confidence to consider awarding them the chairmanship.

The composition of the Commission during the years of this investigation shows that besides the United States, there were nationalities that have almost always been represented: Venezuelans, Brazilians, and Mexicans (until 1985). Former Commissioner Tom Farer speaks of a “tradition that certain countries, above all the United States, will always have a member on the Commission.”¹⁷⁴ For Argentina, the situation was different, since after the end of Genaro Carrió’s term in 1976, the Argentine military government did not provide a new candidate to the Commission. However, since the redemocratization in 1983/1984, there has been an Argentine Commissioner. Furthermore, as mentioned above, always one Central American member was elected – later on this unwritten ‘regional quota’ was extended to the Caribbean.

In 1972, the new members Andrés Aguilar, Genaro Carrió and Robert Woodward joined the Commission, resulting in a new composition that would further shape the Commission’s dynamic. Reportedly, the first dominant bloc consisted of Aguilar, Carrió, Jiménez de Aréchaga with the able support of Woodward. Andrés Aguilar had an incomparable impact on the Commission because he was truly committed to the cause of human rights.¹⁷⁵ In 1976, US law professor Tom J. Farer replaced his compatriot Woodward. Subsequently, two main

173 Stevenson resigned in May 1990. He explained his decision with his age and his responsibility as director of the National Gallery of Arts, which would require his full engagement. Letter from John R. Stevenson, to Leo Valladares Lanza, Chairman, Washington, D.C., May 24, 1990 (IACHR files). Such a choice of priorities by a Commissioner might express a certain lack of commitment to human rights despite the highly commendable nature of his latter professional engagements.

174 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

175 In a letter, Aguilar acknowledged to be “touched” (“conmovido”) by a testimony. This example illustrates Aguilar’s commitment and compassion with victims of abuses. Letter from Andrés Aguilar, August 8, 1984 (IACHR files).

currents prevailed on the IACHR: an activist faction and a more traditionalist-legalist group.

According to several sources, in the second half of the 1970s, Farer and Aguilar, supported by Volio Jiménez, were a dynamic group within the Commission. The Christian Democrat Andrés Aguilar, former Minister of Justice (1958-1962), was a diplomat from the Venezuelan elite with excellent contacts all over Latin America. Aguilar¹⁷⁶ is unanimously named as the most important and influential member and chairman of the IACHR from the 1970s and beyond.¹⁷⁷ Commissioner Farer stated that after his own election, he became Aguilar's "protégé".¹⁷⁸ Farer describes Volio as a typical academic politician from the upper-middle class in Costa Rica, who was dedicated to rule of law and democracy. Further, he saw Volio Jiménez as soft-hearted, especially when he had to visit prisons. According to Farer, this group of activists, set up by Aguilar, Volio and himself, had to convince two other members who were considered not to be strong personalities. Similarly, a former IACHR lawyer holds that Farer's and Aguilar's intellectual weight and dynamism occasionally imposed or attracted Volio and the Colombian Monroy Cabra.¹⁷⁹ However, Farer remarks that Volio changed his attitude concerning the Central American conflicts during the 1980s when he "...became obsessed with the Sandinistas".¹⁸⁰

In any case, Aguilar's activism, courage and intelligence led the Commission and practically neutralized dissenting opinions by reaching a majority vote. These dissenting opinions were notoriously brought up by the Brazilian member¹⁸¹, law professor Carlos A. Dun-

176 Aguilar served also as a member of the UN Human Rights Commission in Geneva and later on at the International Court of Justice.

177 Interviews.

178 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

179 Interviews.

180 As stated by Farer. Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999. See: Nestor D. Sánchez – Revolutionary Change and the Nicaraguan People, in: Hahn (Ed.), pp. 107/108.

181 For instance: IACHR Report on the Work Accomplished by the IACHR during its Twenty-Fifth Session (March 1 through 12, 1971), OEA/Ser.L/V/II.25 doc. 41 rev., 3 November 1971, Original: Spanish, p. 28; IACHR Report on the Work Accomplished by the IACHR During its Twenty-Eighth Session (Special), (May 1 through 5, 1972), OEA/Ser.L/V/II.28 doc. 24 rev.1, 24 August 1972, Original: Spanish, p. 22, 26/27. Nevertheless, Chairman Jiménez de Aréchaga was appar-

shee de Abranches, who was considered to be a fierce defender of governments.¹⁸² Dunshee de Abranches, who served as the Commission's chairman between November 1978 and May 1979, was connected to the Brazilian upper class and was known as conservative and as a strong advocate of the non-intervention principle.¹⁸³ However, Farer states that Dunshee de Abranches lacked a strong personality and had a more "defensive" character.¹⁸⁴ On the other hand, Dunshee apparently was a legalist and thereby somehow contributed to the cause of human rights as well – but not as a progressive activist, more as a juridical purist. Furthermore, the former Guatemalan Foreign Minister and Ambassador to the United States, Carlos García Bauer, IACHR member between 1976 and 1979, was considered to be part of a minor right-wing faction within the Commission that like Dunshee followed a pro-government tendency.¹⁸⁵ The Salvadoran Ambassador to Guatemala, Francisco Bertrand Galindo, was a member whose impartial dedication to human rights was questioned. He was elected into the Commission before the October coup of 1979 ousted the dictatorship of General Romero.¹⁸⁶ His election was intended to prevent the election of a former staff lawyer of the IACHR Secretariat, Roberto Alvarez, who was regarded as 'too liberal' or even as a 'leftist' among authoritarian Member States. In order to accomplish a sort of 'equilibrium' in relation to the Commission's composition, Bertrand Galindo became a candidate of the right. Galindo had served as OAS Representative for the Romero regime and in other public functions. Notwithstanding, the United States opposed his nomination and unsuc-

ently annoyed by Dunshee's dissenting opinions and wanted to leave them out of the documents since they were not obligatory. Letter Justino Jiménez de Aréchaga to Carlos Dunshee de Abranches, Montevideo, February 5, 1974 (IACHR files).

182 IACHR files.

183 Interviews.

184 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

185 In 1969, Dunshee de Abranches as well as the Guatemalan member García Bauer were delegates of the delegations of Brazil and Guatemala at the Special Conference on Human Rights in San José, Costa Rica. At that meeting, the American Convention on Human Rights was drafted and approved.

186 See: Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II. 50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 18.

cessfully voted for Alvarez.¹⁸⁷ Once, Bertrand Galindo described himself indirectly as a “representative of the traditional Latin American right-wing fraction”.¹⁸⁸ In at least one instance, Bertrand Galindo clearly did not completely comply with the confidentiality corresponding to IACHR members.¹⁸⁹ Farer, who describes Galindo as a servant for the famous fourteen families of the Salvadoran oligarchy, believes that he “...was the only man...who completely betrayed the integrity of his position.”¹⁹⁰ In addition, there are accusations that Bertrand Galindo informed Pinochet on the IACHR activities and denounced Aguilar, Farer, and Vargas Carreño.¹⁹¹ In 1982, Chairman Tom Farer complained about the lack of trust in some Commission members:

187 Interviews. Farer remarks that the US should never have acquiesced Galindo’s election because of El Salvador’s government at that time. This shows his distrust of Galindo’s position as well as his belief in the influential power of the US regarding the Commissioners’ election. Interview with Dean Farer, Denver, August 30, 1999.

188 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II: Décimo Período Ordinario de Sesiones, Washington D.C., del 19 al 27 de noviembre de 1980, Primera Comisión, p. 92. Bertrand Galindo referred to a journalist’s description without commenting it.

189 In 1980, he informed the Salvadoran government how to deal with the Argentina Report at the General Assembly. See: Ministry of Foreign Relations of El Salvador, to Amb. Dr. Ernesto Arrieta Peralta, OAS Permanent Representative, San Salvador, September 9, 1980 (from the Salvadoran Foreign Ministry files). The letter includes a transcript of Bertrand Galindo’s comments on how to handle the Argentine report during the 1980 General Assembly. Another comment indirectly supports the suspicions brought up against his integrity as an IACHR member: With respect to the IACHR Annual Report for 1985 and the section on El Salvador, the Salvadoran Foreign Ministry mentioned that there was “no knowledge about the contents of the report.” Probably, it could be interpreted that in the foregoing years there were figures about the Commission reports provided by the Salvadoran Commissioner, but this merely remains a speculation. See: Memorandum, from Guillermo Antonio Meléndez, Director of International Organizations and Treaties, to: Lic. Carlos Adrian Velasco, General Director of Foreign Policy, Subject: Temas de Importancia para El Salvador durante la XV Asamblea General de la O.E.A., San Salvador, November 7, 1985, p. 5. In conclusion, it cannot be proven that Bertrand Galindo openly violated Article 9, 3) of the Statute, which urges the IACHR members to “...maintain absolute secrecy about all matters which the Commission deems confidential.” Statute of the IACHR, Article 9, 3. See Regulations, articles 4 as well as 19 a) and b).

190 Interview with Tom Farer, Denver, Colorado, August 30, 1999.

191 Interviews. Probably, there might have been a connection between some Commissioner’s behavior and the amendment of the IACHR Statute in late 1980: the

“Since it is o[b]vious that several of our colleagues cannot be trusted, in the future it will be necessary to terminate sessions whenever any significant number of these members who understand what the word “gentleman” means must leave. César and Andrés must receive a full account of the disgraceful behavior you witnessed.”¹⁹²

This harsh comment indicates that Farer trusted César Sepúlveda, Andrés Aguilar, and the recipient of this letter, Vargas Carreño. Furthermore it demonstrates that there had been distrust and certain incidents that led to such a fierce statement. Seemingly, the persons whose integrity was doubted were the Salvadoran Commissioner Bertrand Galindo and most likely, the Brazilian Dunshee de Abranches. However, no Commissioner has ever been ousted by a vote of no-confidence from the other members. This might be explained by the different factions within the Commission, and also with the anticipated internal quarrels that presumably would have paralyzed the Commission’s work, or at least temporarily hampered its decision-making processes.¹⁹³

Furthermore, the Mexican Gabino Fraga is depicted as a conservative member who stuck to the famously strong Mexican position on non-intervention.¹⁹⁴ He was reportedly a dominant member but not very pro-active. Fraga’s succeeding compatriot, César Sepúlveda, shared this stand on national sovereignty and the non-intervention principle. Farer describes Sepúlveda, Commissioner between 1980 and 1985, as one of the most influential members. Sepúlveda was a stronger supporter of the Sandinistas than the other Commissioners were, and he did not agree when the IACHR discussed Mexico and its electoral problems.¹⁹⁵ According to the IACHR files, Sepúlveda, who

amendment broadened the provisions of the paragraph regarding the incompatibility with the IACHR membership.

192 Letter from Tom Farer to Edmundo Vargas Carreño, New Jersey, March 10, 1982 (Spelling error in the original, IACHR files).

193 Another factor for not publicly expelling a member could have been the threat of a bad publicity because a troubled Commission would not have been able to present its findings as self-assured as necessary.

194 Farer points out that Fraga “...was old and quiet, he was about 80 years old. He came from the conservative side of the Mexican Revolution.” Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

195 Interview with Dean Tom J. Farer, Denver/Colorado, August 30, 1999.

served as Mexican ambassador to West Germany at that time, was a very active member and chairman.

The Colombian member Marco Gerardo Monroy Cabra, judge of the Colombian Supreme Court, has typically been described as a conservative Commissioner but nevertheless a human rights activist. Elsa Kelly, the first Argentine Commissioner after the end of the dictatorship in 1983, belonged to the Radical Civil Union (Unión Cívica Radical), which governed that South American country between 1983 and 1989. She had previously served as Vice Foreign Minister of Argentina. Kelly, who was comparatively young when elected, reportedly came more out of the activist tradition.¹⁹⁶

Oliver Hamlet Jackman, the Barbadian Commissioner and former Ambassador to the United States, the United Nations, and the OAS, had already proved his stand on human rights as OAS Representative of his country before he entered the IACHR. For instance, Jackman was one of the few ambassadors who vehemently criticized the extraordinarily weak General Assembly resolution on the Commission reports in 1980. In 1989, he became the first chairman of the IACHR from a Caribbean State. Leo Valladares Lanza, Commission member in the late 1980s and the IACHR's chairman in 1990-1991, was a Honduran law professor, diplomat and a Christian Democrat.¹⁹⁷ The Venezuelan member Marco Tulio Bruni Celli was a professor of Political Science, and served as ambassador to the United Nations and the International Labor Organization as well as his country's Vice Minister of Interior. At the time of his election in 1987, Bruni Celli was also a member of the Venezuelan House of Representatives. He served as chairman of the IACHR between 1992- 1993.

This brief and fragmented analysis – preponderantly based on the IACHR's correspondence, the Commissioners' curriculum vitae, and interviews – shows that the heterogeneous compositions of the Commission almost naturally urged the need of leading figures. In fact, there were dominant factions within the Commission whose ability to convince 'nonaligned' members eventually determined the IACHR's decision-making. In any case, during the 1970s it is clear that the faction of Aguilar, Farer, and Volio dominated the Commission's ses-

196 Interviews.

197 Valladares served as adviser to the Honduran Foreign Ministry during the Contadora Group negotiations.

sions. Also, the influence of the Executive Secretary at that time, Edmundo Vargas Carreño, helped to gain the necessary votes for a decision supported by the 'dynamic trio'. The intensive correspondence between Vargas Carreño and Aguilar corroborates this. Unlike the communications between other members and the Executive Secretary, Aguilar and Vargas used a less formal form (in Spanish: *tutear*), which seemed to express a close personal relation.

On the other hand, there were some members who were described as pro-government and some were even suspected to act at least periodically as agents of their governments.¹⁹⁸ Among those were the Brazilian Dunshee de Abranches, the Chilean Bianchi, and the Salvadoran Bertrand Galindo. Nevertheless, it was above all Andrés Aguilar's extraordinary leadership that helped the Commission gain its prestige during the second half of the 1970s. At the end of 1979, Aguilar resigned as the Commission's chairman because of prior commitments and "...in view of the programs and activities the Commission was to carry out during 1980..."¹⁹⁹ Without any doubt, this meant that if not a weakening, at least a discontinuity in the guidance of the IACHR, which had been chaired by Aguilar between 1974 and 1978, from June 1979 until December 1979, and again in 1985.

During the 1980s, there were also several renowned members elected to the Commission. But the performance of the Commission during this time was less important in comparison with its role in the 1970s. According to Farer, there was an intra-institutional problem in the IACHR in addition to regional and international factors that will be discussed in Chapter IV. The Commission of the 1980s, as Farer points out, lacked the fruitful dynamic which had enabled the IACHR's crucial work in the seventies.²⁰⁰ However, another former member of the IACHR found a real "congeniality" between the members when he began to work on the Commission. He further remarks that there were four persons among the Commission members who were more of activists, and three with a more traditional-legalistic attitude. The Commissioners Russomano, Monroy Cabra, and a third

198 See A. Glenn Mower – Regional Human Rights. A Comparative Study of the West European and Inter-American Systems, New York/Westport/London 1991, p. 84.

199 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 26.

200 Interview with Dean Tom J. Farer, Denver/Colorado, August 30, 1999.

member belonged to the latter group that routinely employed and sometimes perhaps even exploited the argument of not to deal with a case because of the requirement of the exhaustion of domestic remedies.²⁰¹

The Commissioners in the 1980s were indeed capable but maybe not as courageous and fortunate as that dynamic group of the 1970s. Furthermore, the IACHR of the 1980s could not count with the decisive support by its most important patron: the US. Moreover, the civil wars in Central America in the course of the revived Cold War did not present as black-and-white a situation as did the right-wing dictatorships of the Southern Cone in the 1970s. A plausible proof of the lack of dynamism could be the Executive Secretary's role: While Vargas Carreño formed part of the activist and progressive group of the late seventies and early eighties, he could not build such a dynamic with the Commissioners of the eighties (see chapter IV).

In this connection, an important factor for the Commission's work was the support by an effective Secretariat. Usually, the research efforts rather neglect the significance of the Executive Secretariat, but above all the lawyers of the Secretariat have been those who did the daily work, prepared the reports, and enabled the Commission to maintain its effectiveness.²⁰² However, in the beginning of the IACHR's work, the Secretariat was of less importance. Until 1965, the IACHR did not even possess its own Secretariat but used the one of the Division of Codification of the PAU. In 1966, however, a separate Secretariat of the Commission began its work.²⁰³ Until 1977 when the Carter administration began to strengthen the IACHR, the performance of the Commission mainly depended on the Commissioners. This is not surprising since there were only a few lawyers in the early seventies.²⁰⁴ However, a former Commissioner even holds that an activist and more belligerent attitude on the part of some young staff lawyers opposed the more staid and reflective point of view of the older Commissioners, which led to a sort of positive equilibrium in the IACHR.²⁰⁵ In this regard it is essential to reiterate that it was the

201 Interviews.

202 See Schreiber, pp. 62-63; David Harris – Regional Protection of Human Rights: The Inter-American Achievement, in: Harris/Livingstone (Eds.), p. 19.

203 Stoetzer, p. 119.

204 Interviews.

205 Interviews.

Commissioners who were responsible for the political decisions, while the staff of the Secretariat did the daily work.

A phenomenon that occurred during the 1970s as well as in the 1980s was the problem of adequate personnel. In general, many of the lawyers were sent to the Commission from the General Secretariat.²⁰⁶ In addition, some members tried to use their position to propose lawyers from their countries.²⁰⁷ This generated a problem, as some of these attorneys did not possess the necessary knowledge in human rights matters and often did not professionally support the Secretariat. Interestingly, the attorneys with US nationality were hired through a competition. The fact that the 1970s and the 1980s continued to witness the contracting of lawyers who did not get hired through competition by proving their competence and adequacy for the work in the Commission's Secretariat, affected the budget as well. Moreover, the lack of competence of the staff attorneys also led to some administrative shortcomings that in one case had potentially far-reaching consequences.²⁰⁸

Between 1970 and 1975, in addition to the Executive Secretary there were two capable lawyers working in the Secretariat.²⁰⁹ Besides the lack of basic human rights understanding, the inappropriate staff members did not show a personal interest or a dedication to the subject, which seemed to be necessary to overcome institutional obstacles. One could distinguish between professionals who were truly engaged and did not care about the time spent on working on cases and those lawyers who considered their profession more like a 9 a.m.-to-5 p.m. administrative commitment. Furthermore, some lawyers who

206 Interviews.

207 For instance, Gabino Fraga, the Mexican Commissioner, and the Salvadoran member Bertrand Galindo proposed attorneys to become staff member. Letter from Gabino Fraga to Edmundo Vargas Carreño, Mexico City, March 8, 1978; Letter from Francisco Bertrand Galindo, Ambassador of El Salvador to Guatemala, to Edmundo Vargas Carreño, May 19, 1980; Letter from Edmundo Vargas Carreño to Francisco Bertrand Galindo, Washington, D.C., May 1, 1981 (IACHR files).

208 See Chapter III. 2.

209 Commissioner Farer described his impression when he first entered the Secretariat's "third-class" offices in 1976: "I went in, dim lights, institutional green walls, and a sense of somnolence, sleepiness, nothing going on; depressing. Almost no lawyers..." Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

were transferred by political and personal contacts within the OAS meant not only a handicap for an efficient performance of the IACHR but also a potential threat to the need for confidentiality due to their political affiliations. Moreover, inappropriate staff members could not easily be fired and continued to belong to the IACHR Secretariat as a sort of ballast.²¹⁰ This does not mean that the concerned lawyers were completely useless, but the fact that they did not work as efficiently as one might expect did at least affect the Commission's budget. In 1977, however, the Commission's chairman Aguilar emphasized that the selection of the technical and professional staff members was a very sensitive matter because it could affect the impartiality and objectivity of the IACHR. On the other hand, Aguilar stated that a candidate's work experience with national human rights organizations without political activity would be considered as a recommendation.²¹¹

Likewise, Vargas Carreño informed Chairman Aguilar of the need to adequately fill the professional posts requested in the Commission's budget.²¹² This demand to hire "qualified" staff lawyers was reiterated in February 1978.²¹³ Furthermore, in a 1978 booklet, Commissioner Farer requested the "...authority to select and manage its staff..." for the IACHR.²¹⁴ The insistence on the adjectives "adequate" and "qualified" indirectly confirms that in the foregoing years there had been at least some attorneys at the Secretariat that lacked such qualifications. Furthermore, in 1978 Executive Secretary Vargas Carreño informed Secretary General Alejandro Orfila in a confidential memorandum that one of the Secretariat's lawyers did not have the sufficient skills

210 Interviews.

211 "...hay que tener una gran prudencia en esta materia [selection of personnel, K.D.], para evitar que se cuestione la imparcialidad y objetividad de la Comisión con el pretexto de que el personal de secretaría está integrado, en su mayoría, por personas pertenecientes o vinculadas a partidos o movimientos políticos de oposición a determinados gobiernos, sobre todo si estas personas pueden ser calificadas como activistas." Letter from Andrés Aguilar, Chairman of IACHR, to Charles Moyer, Executive Secretary ad-interim, IACHR, Caracas, August 30, 1977 (IACHR files).

212 Letter from Edmundo Vargas Carreño to Andrés Aguilar, OAS Memorandum, 8 de noviembre de 1977 (IACHR files).

213 IACHR files.

214 Tom J. Farer – The United States and the Inter-American System: Are There Functions for the Forms? The American Society of International Law, Studies in Transnational Legal Policy No. 17, Washington, D.C. 1978, p. 73.

and therefore had to leave after his trial period.²¹⁵ In fact, the concerned attorney's contract was not extended. Nevertheless, since the second half of the 1970s, the Commission's Secretariat was equipped with some excellent lawyers, though some low-level attorneys continued to work for the IACHR as well.

In combination with the fact that some Commissioners tended to favor or even to protect their governments, those lawyers who were not entirely capable meant a potential threat to the IACHR's functioning. Especially during the 1970s, there were several suspicions regarding the confidentiality of particular lawyers.²¹⁶ Of course, as in every institution, there have also been internal conflicts. However, it is almost impossible to measure the real effects of these conflicts on the output of the institution.²¹⁷ However, it is fair to say that some lawyers were outstanding personalities and later on became high officials of their corresponding governments.²¹⁸ Furthermore, there have been at-

215 Letter from Edmundo Vargas Carreño to Alejandro Orfila, OAS Memorandum, Confidencial, 31 de marzo de 1978. Two weeks before, Vargas proposed to "test" that lawyer's skills by letting him prepare the preliminary report on human rights in El Salvador. Letter from Edmundo Vargas Carreño to Carlos Dunshee de Abranches, Washington, D.C., March 14, 1978 (IACHR files).

216 For instance, in 1979, two NGOs expressed their concern about an Argentine lawyer in the IACHR whose father was Argentine military attaché in Washington, D.C. and therefore feared a threat to confidentiality. Letter from the International League for Human Rights (ILHR) and the Lawyer's Committee on Human Rights (LCHR) to Edmundo Vargas Carreño, January 23, 1979. In Vargas' response he assured that the concerned lawyer was contracted for work at the Commission's library: and that he was no longer stationed in offices of Secretariat and therefore there was no possibility of compromising the Commission's integrity or the confidentiality of communications. Letter from Vargas Carreño to ILHR/LCHR, Washington, D.C., January 24, 1979 (IACHR files). At the 1991 General Assembly, Vargas spoke of three accusations concerning an alleged lack of confidentiality: in two occasions it proved to be the responsibility of government officials, and in one case it was a Commission member. OEA/Ser.P/XXI.0.2, 6 abril 1992, Volumen II, Parte II, Vigésimoprimer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Primera Comisión, p. 192.

217 For instance, in 1986/87 two staff lawyers clashed. The question must be: To which extent did such a confrontation affect the Secretariat's work? Further, two lawyers had difficulties with the administrative personnel, which resulted in several memoranda issued by the secretaries and the concerned attorneys.

218 Former staff attorney (1978-1982) Edgardo Paz Barnica became Foreign Minister of Honduras in 1982 and Guillermo Fernández de Soto has served as Colombian Foreign Minister.

torneys who also thought beyond the daily task to handle petitions, which were published in various articles.²¹⁹

In 1984, the Commission underwent an internal investigation due to accusations of an anonymous person who had blamed one of the IACHR lawyers of making case files disappear and then having them destroyed – mainly cases dealing with Nicaragua. Although, the charges lacked substance, this caused some trouble and cost the Secretariat time and patience.²²⁰

Further, the role of the respective Executive Secretaries was of significant importance. The functions of the Executive Secretary were to direct, plan, and coordinate the Secretariat's work; to prepare a draft work schedule for each session in consultation with the chairman; to advise the chairman and members; to present a written report on the Secretariat's activities to the Commission at the beginning of the sessions; and finally to implement the Commission's and the chairman's decisions.²²¹ Accordingly, the Executive Secretary had the duty to point the Secretariat's way ahead.

In accordance with the Commission's Statute, the Executive Secretary should be a person of high moral character, nominated by the Secretary General after consultation with the IACHR. In addition, the post should be filled with a person of "...recognized competence in the field of human rights..."²²² However, the post of the Executive Secretary has always been filled according to political considerations and not necessarily due to a particular knowledge or experience of the candidate in the human rights field. In contrast, the post of the Assistant Executive Secretary usually was occupied by a person with experience in this area – Charles Daniel Moyer, David J. Padilla and Domingo E. Acevedo, all acted as Assistant Executive Secretaries and sometimes as Acting Executive Secretaries. They all possessed this experience and were considered as career employees of the OAS, comparable to career diplomats who are not expected to be politicians.

219 This seems to be a somehow surprising fact in consideration of the willingly used prejudice that lawyers' minds usually are not made for looking beyond the rigid legal provisions.

220 Memorandum from Edmundo Vargas Carreño, to David J. Padilla, May 22, 1984; Memorandum from David J. Padilla, to Edmundo Vargas Carreño, June 7, 1984 (IACHR files).

221 Regulations of the IACHR, article 13, 1. a-e.

222 AG/RES. 447 (IX-0/79) Statute of the IACHR, Article 21.

The Bolivian Luis Reque served as Executive Secretary from the very beginning of the Commission in 1960 until March 1976, when he resigned because of internal and external pressure (see chapter III. 1.). In October 1973, Reque traveled to Chile only a few weeks after the coup d'état had taken place. With this visit he initiated the Commission's most transcendental performance. Though the background of his trip to Santiago is not entirely clear, the mere fact that Reque ventured to visit Pinochet's Chile allows to state that he showed the necessary courage and activism in this case. In contrast, his successor, Emilio Castañon Pasquel, a Peruvian bureaucrat, did not fulfill the position's mandate as expected. According to Farer, Castañon Pasquel was "...not a man to get his hands very dirty in the work of the Commission". For a former lawyer at the Secretariat, Castañon was a "disaster": an authoritative bureaucrat who did not see himself as executive director but felt he was "president" of the Commission.²²³ Unlike his predecessor, Castañon did not dare to challenge the important OAS organs; he acted more cautiously and less effectively than Reque. His traditional style did not match the necessities of the Commission members, so they asked Secretary General Orfila to substitute Castañon with a personality who suited the Commission's desires and needs.²²⁴ Orfila heeded the Commissioner's complaints and fired Castañon, who had only served as Secretary for a few months.²²⁵ Nevertheless, the announced change was accompanied by a declaration which stressed the "methodological" differences with the Commission members that led to Castañon's resignation. In the course of his retirement, there had been rumors that the leaving Executive Secretary had opposed Chairman Aguilar's efforts to reach an "excessive budget" for the IACHR, for which Aguilar had "invented" projects.²²⁶ In any case, Castañon's comments at his departure caused some irritation among the Commission members.²²⁷

223 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999; Interviews.

224 After a Commission session, Aguilar called a private meeting and said that Castañon Pasquel had to go. Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

225 Washington Post, November 9, 1976, p. A16.

226 OAS Cablegram, Citing Agencia Latin, Washington, D.C., November 12, 1976 (IACHR files).

227 Letter from Gabino Fraga to Andrés Aguilar, Chairman, México, D.F., January 27, 1977 (IACHR files).

After Castañón's withdrawal, the staff lawyer and US citizen Charles Moyer became Executive Secretary ad-interim. Comparable to the unwritten rule that a US citizen presides the World Bank and a European heads the International Monetary Fund, it is also a custom that no US citizen will become Secretary General of the OAS or Executive Secretary of the Inter-American Commission on Human Rights. Accordingly, the strong predominance of the United States in the OAS could not find expression by a US citizen filling a decisive post, because it would have caused protests by Latin Americans. Due to this fact, it could have been difficult for the Secretariat and the entire IACHR to maintain its firm position towards authoritarian regimes during the time that Charles D. Moyer served as interim Secretary. Although Charles Moyer, who entered the IACHR Secretariat in 1970, was an excellent lawyer with remarkable leadership qualities – proven by his performance as Executive Secretary of the Court since 1980 – his nationality and therefore the supplement 'ad-interim' might have weakened the Commission's position. In addition, at that time he reportedly did not possess the capacity to draft in Spanish. Undoubtedly, this must have affected the daily work of the Secretariat. During the period of Castañón's withdrawal – officially in January 1977, but the Peruvian went for vacations in December 1976²²⁸ – and the appointment of the Chilean Edmundo Vargas Carreño in September 1977, the Commission's Secretariat suffered difficulties of institutional strength or even legitimacy due to the provisional leadership. On the other hand, however, the fact that Moyer was not only exceptionally capable but also above all very familiar with the Commission's work was also regarded as an advantage.

During the period of Moyer's term, Aguilar proposed the Chilean Edmundo Vargas Carreño to head the Secretariat. Both had met before in Venezuela, where Vargas Carreño taught law after having left Chile under the rule of General Pinochet. His Christian Democrat contacts helped Vargas get a job in Venezuela. Although it could be seen as quite unusual to propose an exiled Chilean, Orfila eventually agreed with Aguilar's proposal, and Vargas was accepted by the Commission

228 Letter from Charles Moyer to Andrés Aguilar, Washington, D.C., December 8, 1976 (IACHR files).

and became Executive Secretary in September 1977.²²⁹ There are different versions as to whether or not OAS Secretary General Orfila immediately supported Vargas' appointment and work, or whether he was initially reluctant.²³⁰ Unlike Moyer, who was very familiar with the IACHR's functioning and its daily work, Vargas must have spent some time getting informed about the structure, decision-making processes, and relations among the Commissioners. Accordingly, during the first months of his term, the new Executive Secretary invested more time in learning about the IACHR's operation than leading it with the needed high efficiency that the Secretariat later carried out under his leadership. Farer describes Vargas as very capable and intelligent and a personality who was able to make the necessary distinction between important and unimportant facts²³¹ – an ability that was probably of tremendous significance during a period in which the Secretariat was confronted with thousands of petitions. David Padilla, who closely worked with Vargas for almost ten years, acknowledges the Chilean's important role in a number of key developments.²³² Farer saw him as the "eighth member" of the Commission, and another former IACHR lawyer describes Vargas' arrival at the IACHR as the "advent of a new day".²³³

Vargas Carreño's term at the head of the IACHR Secretariat included the Commission's most famous period between the years of 1977 and 1981. In 1984, he was confirmed as Executive Secretary with the support of the entire Commission.²³⁴ According to conversations with the author, several people familiar with Vargas Carreño's performance as Executive Secretary mentioned that he was particularly interested in Chile, also because the Christian Democrat Vargas was considered to be a part of the Chilean exile opposition against the

229 Interviews. Five of the seven members voted in the first round for Vargas; he reached an unanimous result in the second round.

230 Interviews.

231 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

232 Interviews.

233 Interviews.

234 Letter from Chairman César Sepúlveda to Secretary General João Baena Soares, May 14, 1984 (IACHR files).

Pinochet regime.²³⁵ Nevertheless, Vargas reportedly still maintained the best relations with the Chilean diplomatic establishment.²³⁶ The Chilean developed close contacts with human rights NGOs, academic institutions and international organizations.²³⁷ Furthermore, he used the Christian Democrat's network in Latin America. Occasionally, Vargas Carreño was attacked personally as Luis Reque had been before.²³⁸ Since the negative Chilean referendum on president Pinochet's continuity in power in 1988, Vargas Carreño expected to obtain a high post in the new democratic government. After Chile's transition to democracy began, he reportedly was more engaged in Chilean affairs and less committed to the Secretariat's work.²³⁹ Farer remarks that Vargas Carreño himself began to lose interest since he was preparing to return to Chile. Consequently, without a dynamic and engaged Executive Secretary "...the Commission will always lose momentum."²⁴⁰

In May 1990, Secretary General Baena Soares designated Edith Márquez Rodríguez to the post of the Executive Secretary, officially replacing Vargas Carreño.²⁴¹ She had been Venezuelan alternate representative to the OAS until she took over her new functions. Nevertheless, it took longer than expected until Márquez Rodríguez actually headed the IACHR's Secretariat. Thus, Assistant Executive Secretary Padilla continued the interim administration, and so maintained the functioning of the IACHR Secretariat, which remained without a strong leadership. Finally, a woman was in a leading position in the

235 The IACHR files include an extraordinary number of cases in Chile. For example, the case of the murder of Orlando Letelier in 1976 has been documented extensively and an entire file box is dedicated to the Chilean referendum in 1988.

236 Interviews.

237 The correspondence of Vargas Carreño clearly demonstrates his widespread contacts.

238 For instance, Claudio F. Benedí, an exile Cuban, accused the Chilean Executive Secretary as a former friend of president Salvador Allende and for being partial. Benedí compared the IACHR treatments towards Chile and Cuba and found that Vargas had been a "determinating factor in the contraction of sympathizing elements to elaborate the Seventh Report on Human Rights in Cuba". Letter from Edmundo Vargas Carreño, to Tom Farer, Washington, D.C., June 3, 1983 (IACHR files).

239 In fact, Vargas became Vice Minister of Foreign Affairs under the new government coalition led by the Christian Democrat Patricio Aylwin.

240 Interview with Dean Tom Farer, Denver/Colorado, August 30, 1999.

241 The former Argentine Commission member Elsa Kelly was also considered to become Vargas Carreño's successor.

IACHR. Unfortunately, Edith Márquez was considered an inappropriate personality for the post.²⁴²

The IACHR files indicate that the engagement of Assistant Executive Secretary David Padilla compensated for a lack of efficient leadership in the Secretariat. There is reason to believe that he ‘saved’ the Commission during the period between 1989 and 1991 from falling into insignificance. In a speech, IACHR chairman Valladares Lanza especially thanked Dr. Padilla for taking over the Secretariat’s leadership during a “particularly difficult moment,” and for having accomplished his tasks “with special dedication and efficiency.”²⁴³ The widespread recognition of Padilla’s executive functions during the transitional phase that lasted longer than officially recorded found expression in some appreciative comments by OAS representatives.²⁴⁴

Finally, the collaboration between the seven Commissioners and the Secretariat staff certainly played an important role for the IACHR’s performance. In general, there was a three-category hierarchy at the IACHR: first, the Commissioners, second, the lawyers, and third, the administrative personnel of the Secretariat. The relations between the Secretariat’s attorneys and the Commission members are usually described as follows: the Commissioners saw themselves as very important people – “the Commission” – while they regarded the staff lawyers merely as daily workers but not decision-makers. Likewise, according to a former member, some Commissioners felt like

242 Márquez was also assigned as Secretary of the Arbitrary Tribunal of the so-called Bryan-Suárez Mujica Commission to deal with the murder case of Orlando Letelier. This must have diminished her engagement with the IACHR Secretariat. However, due to the fact that her term almost is not covered by the period of this study, the author tends to exclude any further judgment. However, he generally suspects conscious or unconscious reservations against a woman as head of the Secretariat – possibly this fact has influenced some judgements made to the author.

243 *Presentación del Informe anual 1989-90 de la C.I.D.H. por el presidente de la Comisión*, Dr. Leo Valladares Lanza, p. 3 (from the IACHR files).

244 OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, pp. 197, 198.

‘gods’ and treated the staff attorneys like ‘minions’.²⁴⁵ Further, some of the lawyers had trouble with the administrative personnel.²⁴⁶

A former Commission member described “tensions” that originated by the fact that the staff was responsible for the daily work of the IACHR, while the Commissioners had to take political responsibility for the cases and reports.²⁴⁷ According to several interviews, the author concludes that many Commission members, as they were on the top of the IACHR’s chain of command, often showed a sort of pride, commonly described as typical Latin American and often perceived as arrogance and patriarchal conduct. This behavioral pattern is based on a hierarchical understanding of society and professions that can still be experienced in certain parts and milieus of Latin America, where the social structures are such that the upper class members appear to have an arrogant and despising attitude towards those who are perceived as ‘less important’ – particularly in diplomatic affairs. Naturally, this was not always the case, but the few members that acted this way inevitably contributed to a deteriorating atmosphere in regards to the cooperation between Commissioners and staff lawyers. Furthermore, the age gap between staff and members also contributed to this kind of difficulties.

In addition, the typical bureaucratic-legal formalism of the Latin American diplomatic caste might have constituted an obstacle for the IACHR performance. While typically US citizens enjoy the reputation of acting relatively rapidly and without too many formalities, some Latin American members’ need to underline the corresponding forms could be regarded as a delaying factor for the Commission’s work – at least in theory.²⁴⁸ In reality, nevertheless, the IACHR was appropri-

245 Interviews.

246 According to the IACHR files, these tensions are mainly proven with regard to the mid-eighties.

247 Interviews.

248 For example, a comparison between formal and informal letters written in English and in Spanish, with Latin American and US American recipients and authors, clearly shows that US Americans tended to express themselves directly and without unnecessary formalities. On the other hand, Latin Americans saw themselves forced to employ the typical diplomatic phrases before coming to the point. This rhetoric behavior pattern could also be observed during the General Assembly sessions. Interestingly, it appears as an indicator of a US ambassador’s knowledge or sensitiveness for Latin American issues if he or she used comparable introductory forms like the Latin American diplomats.

ately polite and formal but at the same time not necessarily slow. Actually, in many urgent cases the decision-making processes were surprisingly short although the aforementioned considerations should be taken into account. However, in contrast to the slow-working diplomatic apparatus of other OAS organs, the Commission suffered less from the handicap of bureaucratic formalism since the majority of its members obviously understood the basically urgent nature of certain human rights situations. It was certainly different to comply with the provisions to approve a project on the creation of a new working unit for a local office, for instance, than to wait weeks or months to correctly deal with all formalities of a petition concerning a person who was exposed to daily torture or even soon to be killed. In spite of this fact, many cases took years in processing.

After this analysis of the institutional factors and personal aspects within the Commission and its Secretariat, a review of the main activities and the relationship between IACHR and the OAS Member States, as well as its role within the organization, will provide a deeper understanding of the institution, often called the ‘conscience of the hemisphere’.

II. 3. From an Exclusively Juridical Organ to a Highly Political Institution: The Positions and Activities of the IACHR

Bryce Wood names three key terms regarding the Commission’s performance: visits, reports and the public.²⁴⁹ The first question to address is what type of activities the IACHR should carry out.

The major reason for the Commission’s foundation was to ‘promote’ human rights. It is interesting to look at the difficulty in establishing priorities between the promotion and the protection of basic rights. Since the Commission came into existence, there has been a question of priorities between informing about the existence and function of human rights protection on the one hand, and actual human rights protection on the other hand. In other words, the question arose as to which activity should take precedence. This unnamed competition affected the Commission’s radius of actions at least until the mid-1970s. In general, fellowships, radio and television programs, seminars and symposia as well as competitions and publications were de-

249 Wood, p. 126.

signed to contribute to a consciousness for human rights in the countries of the hemisphere. The Commission sought to create a better diffusion and education concerning human rights. The agenda point “Teaching and Dissemination of Human Rights” was included in the IACHR’s General Work Program in 1971.²⁵⁰ A year later, the IACHR decided that the dissemination of knowledge of human rights and its protections was one of the most important tasks of the Commission.²⁵¹ In 1973, the fellowship program ‘Rómulo Gallegos’ was established in honor of the Commission’s first president. In addition, a competition on human rights helped to create a broader understanding for those rights. The Commission organized seminars – the first one was on the liberty of unions.²⁵² The Commission also prepared informative booklets on its work, written in an understandable language. It prepared a handbook for bar associations, special institutions on human rights, trade unions and press associations in order to provide information about the functioning of the human rights system.²⁵³ Beginning in 1977 and with financial support during the Carter administration, the IACHR carried out and co-sponsored numerous seminars and conferences on human rights topics all over Latin America. In May 1984, the Inter-American Commission on Human Rights held an internal seminar on the Commission’s practice for processing communications al-

250 IACHR – Report on the Work Accomplished by the IACHR during its Twenty-Sixth Session (October 27 through November 4, 1971), OEA/Ser.L/V/II.26, Doc. 37 rev. 1, 29 March 1972, Original: Spanish, p. 47.

251 IACHR – Report of the Work Accomplished by the IACHR During its Twenty-Ninth Session, (October 16-27, 1972), OEA/Ser.L/V/II. 29 doc. 40 rev. 1, 28 December 1972, Original: Spanish, p. 45.

252 Informe Anual de la CIDH correspondiente a 1973, OEA/Ser.P AG/doc. 409/74, 5 marzo 1974, Original: español, pp. 149, 150. Informe Anual de la CIDH 1972, OEA/Ser.P AG/doc.305/73 rev.1, 14 marzo 1973, Original: español, p. 85.

253 IACHR – Report on the Work Accomplished during its Twenty-Third Session, April 6 through 16, 1970, OEA/Ser.L/V/II.23 Doc. 27 (English), 11 December 1970, Original: Spanish, pp. 30-32. In 1971, the Commission considered whether to approve the agenda point “Study of the Human Rights in the Americas” as a resolution in order to obtain more publicity and attention but finally decided to keep it as a regular Annual Report Chapter. IACHR – Report of the Work Accomplished by the IACHR during its Twenty-Fifth Session (March 1 through 12, 1971), OEA/Ser.L/V/II.25 doc.41 rev., 3 November 1971, Original: Spanish, pp. 40/41.

leging human rights violations.²⁵⁴ Moreover, in its Annual Report for 1983-1984, the Commission judged the teaching of human rights, beginning with lessons in the primary and secondary schools, as necessary in response to past violations and persisting abuses in the region.²⁵⁵

In spite of these efforts, the Commission's existence and work were widely unknown in the hemisphere until the mid-seventies. For example, the IACHR dealt with a case of the persecution of a unionist in El Salvador that dated back to 1970.²⁵⁶ The fact that no cases including gross violations of human rights were sent to Washington leads to the assumption that, in this case, the Commission was either unknown among the victims in El Salvador or that they considered the IACHR to be useless as organ of the OAS, because it represented an (inter-) governmental institution.²⁵⁷ This unawareness of the Commission's mandate changed in the aftermath of the coup in Chile in 1973. The Chilean case shows that the initial petitions directly sent to the IACHR mainly dealt with cases of students, professors or other members of social groups with a higher education. The cases that concern lower-class victims were primarily provided by NGOs. It is a common notion that the human rights debate was initiated by the educated middle-class in Chile, Uruguay and Argentina that had strong ties to Europe and North America.

In the years before the early- and mid-seventies, the Commission's work – except in the cases of the Dominican Republic, Cuba and the Salvadoran-Honduran war – was more limited to areas such as education, distribution of information about human rights and the elaboration of distinguished human rights doctrines. It is fair to say that the latter was the intention of the OAS Member States in 1959 when they

254 IACHR – Annual Report of the IACHR 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, Original: Spanish, p. 19.

255 IACHR – Annual Report of the IACHR 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, Original: Spanish, pp. 144/145.

256 Informe Anual de la CIDH 1972, OEA/Ser.P AG/doc.305/73 rev.1, 14 marzo 1973, Original: español, p. 67.

257 Accordingly, Farer assumed that "...until the late sixties most human rights violations were committed against poor people who had no idea of international institutional redress. And in those days there were not many national human rights organizations. So, there was no connection between the victims, on the one hand, and the Commission, on the other, no mutual awareness." Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

agreed on an institution to promote human rights. The Commission developed ambitious topics like “Human Rights at the level of School Children” or “the development of science and technology and human rights”.²⁵⁸ These items were certainly important but not necessarily a priority in view of the gross human rights violations occurring at that time. These initiatives also demonstrated how dependent the Commission was on cases submitted to it. Particularly in the early years, the IACHR reports were of a fragmentary nature. The situation in some Member States where human rights violations occurred could successfully appear less grave due to the fact that no cases were sent independently to the IACHR and that an abusing government itself submitted information on legal measures regarding human rights.²⁵⁹ This led to the ironic situation that not only massive human rights violations in a country failed to be covered by the reports but that further the government in question appeared as a sort of ‘human rights champion’ because of the submitted human rights laws.²⁶⁰ In several occasions, the IACHR emphasized that the description of the cases derived from the received petitions and did not necessarily constitute a judgment of the Commission.²⁶¹ This was a mostly unsuccessful attempt to demonstrate the IACHR’s impartiality and seriousness because the accused governments usually did not pay much attention to this type of detail.

Before 1973, however, the IACHR was not very effective in view of the violations throughout the region. The Inter-American Commission on Human Rights had its successes in the 1960s when it played a

258 Human Rights at the level of School Children, prepared by Mrs. Angela Acuña de Chacón, OEA/Ser.L/V/II.4 Doc. 22 (English), April 23, 1962, Original: Spanish; Informe Anual Presentado por la Comisión Interamericana a la Asamblea General Correspondiente a 1974, OEA/Ser.G, CP/doc. 399/75, 9 enero 1975, Original: español, pp. 96/97.

259 See Tom Farer – The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox, in: Harris/Livingstone, p. 32.

260 Many governments had sent their law decrees, which touched the human rights issue, to the Commission in order to be mentioned positively for their progressive legislation and exemplary cooperation with the human rights organ. Nevertheless, many of those governments used to violate human rights occasionally or systematically – so these laws just were used for public relations goals.

261 For instance: CIDH – Informe sobre la labor desarrollada por la Comisión Interamericana de Derechos Humanos en su trigésimoquinto período de sesiones, (del 20 al 30 de mayo de 1975), OEA/Ser.L/V/II.35 doc. 45 rev.1, 28 noviembre 1975, Original: español, pp. 6, 42.

pacifying role during the crisis in the Dominican Republic and the settlement of the so-called 'Soccer War' between El Salvador and Honduras in 1969. In addition, the Commission helped to draft the American Convention on Human Rights that was signed in 1969. Besides these successful performances, the Commission was not as aloof about serious human rights violations as the political main organs of the OAS, but it did not become a controversial human rights defender until the coup in Chile in 1973. Likewise, former Commissioner Farer pointed out that before 1973, the Commission had "...a very low profile; it was not a very consequential institution".²⁶² The available correspondence of the IACHR before 1973 mainly consists of polite diplomatic notes and cordial letters and does not include many controversial items. During an IACHR session in Colombia in October 1973 – the military had already seized power in Chile – the Colombian Foreign Minister, Alfredo Vázquez Carrizosa, denounced the lack of political will to name gross violations and thereby described adequately the prevailing mood in the OAS towards human rights when he said "America has fallen into the error of valuing human rights as a subject for amicable conferences and not as a permanent code for the eras of juridical normality or of domestic or international turbulence."²⁶³ With this statement, human rights expert Vázquez Carrizosa impressively identified the political circumstances under which human rights were seen and the IACHR was founded and perceived.

Returning to the three main aspects in the work of the IACHR mentioned above, the Commission's reports are of particular interest, since they constitute its principal written sources. In general, the Inter-American Commission on Human Rights published two sorts of reports: Special Reports and since 1970, an Annual Report.²⁶⁴ The Spe-

262 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999. This was also a result of the lack of knowledge on the Commission in the hemisphere.

263 IACHR – Report on the Work Accomplished by the IACHR at its Thirty-First Session, (October 15-25, 1973), OEA/Ser.L/V/II. 31 doc. 54 rev.1, 12 June 1974, Original: Spanish, pp. 2, 4.

264 Waldmann correctly remarks that neither the reports of the UN or OAS Human Rights Commissions, nor those prepared by the International Commission of Jurists or Amnesty International do comply with scientific requirements: the existent indices do not meet with the criterions of information gathering nor with regard to its reliability and completeness the demands of serious scientific research. Peter Waldmann – Staatliche und parastaatliche Gewalt: Ein vernachlässigtes

cial Reports mostly dealt with particular countries but occasionally also with special topics. The first Annual Report was presented in 1970, although the Special Conference had already required it in 1965. In 1970, the Commission discussed how to organize the Annual Report. The alternatives were to categorize countries, regions or the rights of the American Declaration of Rights and Duties of Man.²⁶⁵ In fact, the form and content of the reports underwent various stages of development throughout the years and decades. In the beginning, in 1971, the Commission opted to structure the report by rights and not by countries.²⁶⁶ In reference to the Annual Report's structure, the IACHR approved some standards in 1972, but those were modified various times.²⁶⁷ After its approval, the Commission usually sent the Annual Report to a working group of the OAS Permanent Council, which transferred it to the General Assembly. The Annual Reports of the early 1970s possessed a very general nature and contained between 32 (1970) and 154 (1973) pages. This general approach was derived from the few cases sent to the IACHR, whereby it considered it useful to provide statements on the broader situation of the different rights groups in addition to the case descriptions.

The Commission's handling of individual cases always took into account the safety of victims and witnesses. For instance, to inform a person about the decision taken or to receive information from the corresponding government, sometimes the IACHR sent a letter without the letter head of the Commission from a place in Virginia or Maryland.²⁶⁸ Since 1976, the IACHR Reports did not inform on pend-

Forschungsthema, in: Hans Werner Tobler/Peter Waldmann (Eds.) – Staatliche und parastaatliche Gewalt in Lateinamerika, Frankfurt/Main 1991, p. 28.

265 IACHR – Report on the Work Accomplished during its Twenty-Fourth Session, October 13 through 22, 1970, OEA/Ser.L/V/II.24 Doc.32 (English) Rev. Corr., 5 April 1971, Original: Spanish, p. 36.

266 IACHR – Report of the Work Accomplished by the IACHR during its Twenty-Fifth Session (March 1 through 12, 1971), OEA/Ser.L/V/II.25 doc.41 rev., 3 November 1971, Original: Spanish, p. 8.

267 “Standards for the Drafting of the Annual Report“, in: IACHR – Report of the Work Accomplished by the IACHR During its Twenty-Ninth Session, (October 16-27, 1972), OEA/Ser.L/V/II. 29 doc. 40 rev. 1, 28 December 1972, Original: Spanish, pp. 48/49.

268 See, for example, Letter from Andrés Aguilar, to Luis Reque, Caracas, July 18, 1975 (IACHR files).

ing cases due to a resolution adopted by the General Assembly.²⁶⁹ According to the Commission's Regulations, article 51, the IACHR assumed accusations to be true if the concerned government did not provide any response or commentary on the case. In some cases, this procedure was effective because it pressured governments to be more responsive. In general, many individual cases were sent to or received by the Commission at the same day. This allows the assumption that these petitions were provided to the IACHR by local or international human rights organizations.

Since 1974, and with the exception of the 1976 report, the Annual Reports became more extensive and thereby mirrored the emergence of dictatorships, which also increased attention on human rights violations. The Commission included a separate chapter dealing with the situation in particular countries. The Annual Report of 1980-1981, however, was structured differently than foregoing reports since it exclusively dealt with various human rights of the American Declaration and the Convention on Human Rights. This meant that the report did not include a special chapter on the situation in any Member State.²⁷⁰ However, the 1981-82 Report returned to the old form, which caused criticism by authoritarian regimes.²⁷¹ Consequently, the 1982-83 Report again dropped the chapter dealing with specific Member States but in the subsequent years, the Commission returned to the old form of its Annual Reports – also a result of the democratization that had taken place in Argentina, Brazil and Uruguay. In 1988, the Commission decided that once a year the Secretariat should supply summary information on the human rights situation for each of the Member States.²⁷²

In contrast to the short documents of the early 1970s, the late 1980s Annual Reports contained more than 300 pages; the report for

269 AG/RES.246 (VI-0/76), in: IACHR, Annual Report 1977, OEA/Ser.L/V/II.40, Doc. 5 corr.1, 7 de junio de 1977, Original: Spanish, p. 1, in: *Nacimiento*, p. 118.

270 Nevertheless, the report named Chile in several occasions to give an example of the most serious human rights violations in the hemisphere. Medina Quiroga, p. 294.

271 See: OEA/Ser.P/XI.0.2, 4 diciembre 1984, Volumen II, Parte II, Undécimo Período Ordinario de Sesiones; Castries, Santa Lucía, Del 2 al 11 de diciembre 1981; *Actas y Documentos*, Vol. II, 2a parte, Primera Comisión, pp. 65-69.

272 CIDH – 72nd Session, Draft Agenda of the Seventy Second Period of Sessions, OEA/Ser.L/V/II. 72, Doc. 2, 14 March 1988, Original: Spanish, p. 2.

1990-1991 had 554 pages. As in several occasions before, in the end of the 1980s, the Commission felt obliged to include a statement on the nature of its observations in regard to particular countries because the reports were still of a fragmentary nature. The Commission made clear that the section on countries did not provide an “overall and complete description” of the human rights situation in a Member State but more an update of the period covered by the Annual Report.²⁷³

This generated a difficulty for the reports to satisfy the need of a general overview of the human rights situation in the Member States despite of the Commission’s sometimes very limited sources. That problem constituted less of an obstacle for the Special Reports since those were mostly based on on-site visits. Some country reports, however, could only refer to material sent to the IACHR because the Commission did not receive the permission to conduct an on-site observation in the country. Usually, the Special Reports on particular countries began with an overview on the legal position of human rights in the concerned Member State. Subsequently, the reports dealt with the rights named in Article 9 a) of the IACHR’s Statute. In general, these studies regarded the situation of civil and political and in some cases of economic and social rights as well.²⁷⁴ As mentioned above, the best way to prepare such a country report was to conduct an on-site observation in the territory of the concerned State.

The Commission interpreted its right to meet in each Member State as the implicit permission to visit every country of the inter-American system.²⁷⁵ Initially, this interpretation was accepted without problems because the first countries affected were the Dominican Republic, Honduras and El Salvador – Member States that were considered to have less political weight. Later, this practice was formally approved. However, the IACHR still had to ask the government in question for permission – sometimes, this requirement enabled the governments to postpone the visit various times or indefinitely. Other States, such as Cuba, Paraguay and Uruguay, categorically denied

273 For instance: Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, Original: Spanish, p. 128.

274 See: Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988, pp. 75/76; Medina Quiroga, pp. 152-156.

275 Regulations of the IACHR, Article 12, OEA/Ser.L/V/II. 17 Doc. 26, May 2, 1967.

such an investigation.²⁷⁶ As an experience of the first on-site investigation in Chile in 1974, the Commission prepared regulations regarding on-site observations in order to strengthen the IACHR's procedural frame concerning one of its most effective instruments.²⁷⁷ As an on-site inquiry was an important factor for the relations between a Member State and the Commission, chapter II. 4. will address this item as well.

In an interview with the author, former Commission member Farer described how he experienced the dynamic that evolved during the preparation of a report on an on-site observation. He pointed out that very early on the majority's opinion was clear but the minority group tried to make some adjustments concerning adjectives. This procedure enabled the Commission to reach a consensus on the reports by maintaining the majority's report and adding some compromise modifications brought up by the minority.²⁷⁸ The first Special Reports on countries mainly dealt with Cuba. Until 1983, the IACHR issued the seven Special Reports dealing with Cuba. During the 1960s, there were Special Reports on Political Refugees in America that also mainly referred to Cuba. This clearly indicated that the Commission somehow saw itself forced to report on Cuba. Besides the Cuban reports, the Special Reports were critical, although not all of them were as harsh as the Report on Nicaragua of 1978 or the Argentine Report of 1980.

An important aspect for the Commission's work has been the relationship between the IACHR and human rights NGOs. The work of

276 While Cuba ignored the Commission's authority explicitly, Paraguay and Uruguay repeatedly employed strategies to delay an invitation – so their performance could be called a 'de facto categorical denial'.

277 See OEA/Ser.L/V/II.35, Doc.4 rev.1, October 15, 1975: "Regulations regarding on-site observations". Moreover, in March 1975, Secretary Reque had urged to give the Commissioners a diplomatic status while conducting an on-site examination. Letter from Luis Reque to Andrés Aguilar, Washington, D.C., March 3, 1975 (IACHR files).

278 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999. "The question of the Commission's ability to be an independent, positive force also arose in connection with its reports. As one person close to this body's work noted, some reports have been "watered down" and, in some cases, the Commission may have been "too timid" to include in its recommendations, for example, a statement that a change in government was necessary." A. Glenn Mower – Regional Human Rights. A Comparative Study of the West European and Inter-American Systems, New York/Westport/London 1991, p. 85.

local groups and international NGOs can be described as the ‘fuel’ that kept the machine of the Commission going. Initially, there were efforts to create a national human rights committee in each Member country but these endeavors were not very successful. The idea to found national human rights committees in the Member States was based on the thought that these committees could work closely with the Commission and thereby would constitute a sort of local sub commission. This demonstrates that the Commission was eager to act autonomously, which meant independently without cooperation with the few existing NGOs in the human rights field. In 1970/71, the IACHR was disillusioned because the idea of national committees had not been received favorably.²⁷⁹ Later, the following questions came up: Should those committees function as consultants for the Commission or advisors for the respective government? Which activities should those entities undertake and should they take place in coordination with the IACHR? Merely two groups were founded – in Costa Rica and Venezuela – and both worked only for a short time. Finally, the attempt to create committees linked to the Commission failed. One of the crucial problems was the financing.²⁸⁰ As a result, the IACHR agreed on the cooperation with already established institutions.

In accordance, the main sources of information for the Commission were above all reports and documents prepared by the national and local NGOs. Since 1973, non-governmental human rights organizations in Latin American countries as well as the international human rights NGOs gained considerable importance. Without their work, the IACHR would not have been able to work as efficiently as it did. The strength of those organizations was apparent during the 1980s, when the OAS and the IACHR lost support from the US. The establishment of the so-called ‘human rights network’ was able to compensate for that loss of influence. During the 1980s, the international human rights community made human rights violations public. For example, the case of El Salvador did not provoke a Commission’s report in the early 1980s though there occurred thousands of disappearances, murders and cases of torture. The human rights violations in Central

279 See also Letter Justino Jiménez de Aréchaga to Luis Reque, Confidential, Montevideo, September 15, 1971 (IACHR files).

280 See Informe Anual de la CIDH 1972, OEA/Ser.P AG/doc.305/73 rev.1, 14 marzo 1973, Original: español, pp. 87/88.

America were preponderantly brought to the attention of the international community by the work of the mostly independent NGOs, because the lack of political support hampered the Commission to report on the human rights practice in countries like El Salvador.

Already in the early years of the Commission, nongovernmental human rights organizations had asked to accredit observers to the IACHR sessions but due to the confidential character of those meetings, the Commission refused that application.²⁸¹ As this example shows, the Commission was aware of the risk to be blamed for impartiality while naming particular NGOs as their principal sources.²⁸² In its Annual Report of 1976, the IACHR expressed its support for private international groups, which backed the Commission.²⁸³ In January 1978, the Commission discussed whether to include a reference to NGOs like Amnesty International or the Washington Office on Latin America in its Special Report on Uruguay. The Commission's chairman, Aguilar, stated that those organizations did not have the control and objectivity the IACHR had, which possessed precise norms since it was responsible to a superior organ.²⁸⁴ Accordingly, the IACHR rejected many proposals for projects directed to the Commission.²⁸⁵ The fact that many institutions and NGOs asked the Commission for collaboration or even support was not surprising, because of the famous reputation and the financial support by the Carter administration, which the IACHR enjoyed in the late 1970s and early 1980s.

281 IACHR – Report on the Work Accomplished during its Eighth Session, April 6 to 20, 1964, OEA/Ser.L/V/II.9 Doc.24 (English), August 3, 1964, Original: Spanish, pp. 25/26.

282 For instance, US Senator Edward Kennedy provided much information to the IACHR, especially since the Chilean coup in 1973. However, in one occasion, his assistant, Mark Schneider, insisted on leaving out a reference to Amnesty International because this would have “undesirable effects” for the concerned victim. Memorandum from Mark Schneider, Office of Senator Kennedy, to Executive Secretary Luis Reque, November 15, 1974 (IACHR files).

283 IACHR – Annual Report 1976, OEA/Ser.L/V/II.40 doc.5 corr. 1, 7 junio 1977, Original: Spanish, p. 17.

284 IACHR files.

285 For instance, in 1980 the Commission rejected proposals by the Archdiocese of Santiago, Vicaría de la Solidaridad, the Ford Foundation as well as projects presented by the University of Costa Rica and from the ERASMUS Universiteit Rotterdam (See IACHR files).

Since 1974, Amnesty International (AI) directed questions, petitions and other correspondence to the Commission, including many individual cases. In 1977, Amnesty International USA Director Stephanie Grant hoped to establish a consultative status for her institution at the IACHR.²⁸⁶ There also have been confidential information flows from AI to the Commission. Nevertheless, it seems surprising that the exchange of information between the IACHR and Amnesty International in 1978 was not as well established as one might suppose.²⁸⁷ In 1979, Executive Secretary Vargas Carreño asked AI for cooperation in regard to the forthcoming IACHR visit to Argentina.²⁸⁸

Further, in 1983 the AI Secretary General offered to send the organization's regular publications to the Commission.²⁸⁹ It is surprising that the IACHR did not receive those documents before, in particular taking into account Amnesty International's work and reputation. In 1988, AI Secretary General Martin mentioned that the last meeting between his organization and the IACHR had taken place in the last dec-

286 Letter from Stephanie Grant, Director Amnesty International USA, to Andrés Aguilar, Chairman, October 31, 1977 (IACHR files).

287 As an example, the Secretary General of AI turned to OAS Secretary General Orfila instead of the Commission's Executive director. Letter from Martin Ennals, Secretary General of Amnesty International, International Secretariat, to Alejandro Orfila, Secretary General of the Organization of American States, London, April 26, 1978 (IACHR files). However, in the same year, a meeting between AI representative Inger Faklander and the IACHR Secretariat took place. In 1979, Amnesty International, asked the IACHR to propose a potential successor for AI's leaving director, Martin Ennals. The latter seemed to have developed a closer relationship to the IACHR's Executive Secretary, Vargas Carreño, directing a letter to him and calling him "dear Edmundo". Letter from Andrew Blane, AI, Conveyor, Secretary General Recruitment Committee, to Edmundo Vargas Carreño, IACHR, London, June 29, 1979 (IACHR files). In that letter, Ennals proposed to create a project covering the human rights situations in the region and asked the IACHR for funding. Ennals suggested that the IACHR staff lawyer Roberto Alvarez should coordinate such a project in Latin America. This was a sensitive issue because the IACHR's financial support for an Amnesty International program would have threatened the Commission's institutional need for independence. Letter from Martin Ennals, AI Secretary General, to Edmundo Vargas Carreño, IACHR, London, 8th November, 1979 (IACHR files).

288 Letter from Edmundo Vargas Carreño to Amnesty International USA, January 10, 1979 (IACHR files).

289 Letter from Thomas Hammarberg, AI Secretary General, to Edmundo Vargas Carreño, IACHR, London, April 25, 1983 (IACHR files).

ade.²⁹⁰ These fragmented sources indicate that there was a relationship to one of the most important NGOs but that it was not as close as one might suppose or others criticized. Consequently, a former IACHR official holds that in the 1970s and 1980s, the most important contacts the Commission kept up were those with local groups rather than with international NGOs.²⁹¹ Further, the fact that until the mid-1980s no local human rights NGOs existed in countries like Guatemala, for instance, affected the communication with the Commission.²⁹²

In 1986, as in previous years, the Commission condemned attacks that were carried out on human rights organizations, as well as difficulties that were originated by governments in the region. The Commission stated its “consistent policy ... to encourage the establishment” of human rights organizations as well as its support.²⁹³ In 1987/1988, the Commission mentioned the human rights groups with which it had established “close ties”; among those the Vicaría de la Solidaridad of the Archdiocese of Santiago de Chile, Socorro Jurídico Cristiano “Arzobispo Oscar Romero” in El Salvador, and the Federación Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos in Venezuela. Further, the Commission maintained strong relations to Argentine NGOs: the Grandmothers of the Plaza de Mayo, the Center for Legal and Social Studies (CELS), the Relatives of Detained and Disappeared.²⁹⁴

In summary, the IACHR was to a certain extent dependent on the work of local, regional and international human rights NGOs. This included the risk of operating with potentially biased information. However, the IACHR always tried to act impartially by applying its own standards. The IACHR reports did not simply take over provided information and if it did so, the documents used to indicate the source. In contrast to private human rights groups, the IACHR could also deal with human rights abuses at the diplomatic level in order to reach a

290 Letter from Ian Martin, Secretary General of Amnesty International, to Edmundo Vargas Carreño, London, May 9, 1988 (IACHR files).

291 Interviews.

292 Margaret E. Keck/Kathryn Sikkink – *Activists beyond Borders*, Advocacy Networks in International Politics, Ithaca 1998, p. 206.

293 Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, pp. 194/195.

294 Annual Report of the IACHR 1987-1988, OEA/Ser.L/V/II.74, Doc. 10 rev. 1, 16 September 1988, Original: Spanish, pp. 346/347.

friendly settlement.²⁹⁵ A former chairman of the Commission speaks of a “quasi-diplomatic role” of the IACHR, which stands out against the NGO focus on publicity.²⁹⁶ This was a decisive advantage for the Commission, although it used the tool of publicity – the major and sole instrument of NGOs – as well. The Commission usually decided to publish its correspondence with a reluctant government in order to lay pressure on the latter. Further, the on-site observations always received a high level of media interest. The annual General Assembly paid a lot of attention to the Commission’s reports.²⁹⁷ Notwithstanding, it is astonishing that during the time covered by the present investigation, the IACHR and its Secretariat never came close to a professional and optimum use of these high levels of publicity.

One initial topic for the Commission, mainly an issue of the 1970s, was the subject of ideological pluralism.²⁹⁸ In 1973, Latin American States succeeded in including the “principle of ideological pluralism” into the OAS Charter, which permitted the Member States’ to choose their own path to reach economic and social progress.²⁹⁹ In theory, this meant different political systems within the OAS, whose Charter explicitly refers to democracy as the only acceptable political system. Naturally, this effort was not only directed towards the chronic tendency of US interventions in countries with unacceptable governments but also an attempt for dictatorships to get away before the OAS with its deficiencies in democracy and human rights.³⁰⁰ The IACHR regarded those tendencies with concern as far as their impact on human rights.³⁰¹ The chairman of the Commission, Jiménez de Aréchaga, favored the concept of “representative democracy” and warned of the consequences of the pluralism principle. The IACHR agreed on the interrelation between human rights and representative democracy and rejected the concept of ideological pluralism as in-

295 See article 48 of the American Convention on Human Rights.

296 Interviews.

297 Medina Quiroga, p. 143.

298 See Medina Quiroga, pp. 60-65.

299 Washington Post, January 6, 1974, p. A22.

300 Medina Quiroga, p. 60.

301 IACHR – Report of the Work Accomplished by the IACHR at its Thirtieth Session (April 16-27, 1973), OEA/Ser.L/V/II. 30 doc. 45 rev.1, 6 August 1973, Original: Spanish, p. 3.

compatible.³⁰² Likewise, during the 1980s the Commission insisted on the (re-) establishment of representative democracy in the Member States. This was no new position, but it was a novelty that the Annual Report recommendations mentioned this request as the first point.³⁰³ Although the principle of ideological pluralism was eventually established as a part of the Charter after the reform of 1985³⁰⁴, in 1986 a particular General Assembly resolution on human rights and democracy reiterated the interdependence between these items.³⁰⁵ In the General Assembly resolutions on the IACHR reports, the effective exercise of representative democracy was considered to be the “best guarantee of human rights”.³⁰⁶

The Commission’s advocating of representative democracy during the 1980s was also related to the increased influence of the Reagan administration that strongly supported democratization, although ‘democracy’ was poorly defined. Furthermore, the shift to promote democracy was a result of a paradigm change within the discussion on State and society. Many of the former critics of dependent capitalism in Third World countries had suffered repression themselves and thus came to the conclusion that human rights, rule of law, and separation of powers were more than just a goal after a concluded State reform but actually a ‘conquest of humanity’.³⁰⁷ However, another explanation will be argued here. The Inter-American Commission on Human Rights was always composed by mostly conservative members. The conservative tendency of the eighties, combined with the debt crisis and the troublesome and ideologically divided civil wars in Central America, led the Commissioners to opt for the lesser, as it were, of the three evils – a fragile democracy. This stand ensured that the IACHR

302 IACHR – Report on the Work Accomplished by the IACHR at its Thirty-First Session, (October 15-25, 1973), OEA/Ser.L/V/II. 31 doc. 54 rev.1, 12 June 1974, Original: Spanish, p. 63/64. See Medina Quiroga, pp. 61-65.

303 For instance, Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, p. 210.

304 Álvaro Tirado Mejía – The O.A.S. and Colombia, Colombian Ministry of Foreign Affairs, Bogotá 1998, p. 258.

305 AG/RES. 837 (XVI-0/86): Human Rights and Democracy, in: OEA/Ser.L/P/XVI.0.2, 17 December 1986, Volume I, Sixteenth Regular Session, Guatemala City, Guatemala, November 10-15, 1986, p. 69.

306 AG/RES: 1022 (XIX-0/89), in: Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, Original: Spanish, p. 16.

307 Mols, p. 210.

would be able to distance itself from right-wing dictators as well as from leftist insurgents. The question, nevertheless, is allowed whether the emphasis on democracy in any instance reflected the dominance of Reagan's concepts of human rights, democracy and the socioeconomic context (see chapter IV. 1.).

Furthermore, a particular problem of the 1970s was the terrorism issue and its supposed connection with human rights. Dictatorships used to link both items in order to smooth down deplorable human rights records by legitimizing it with the terrorist threat. The first IACHR reports of the 1970s referred to the prevailing terrorism in the hemisphere. This approach of the Commission coincided at that time with the political organs of the OAS, which discussed terrorism as a main topic. The leading figure for elevating terrorism to a vital agenda point was the Brazilian member Carlos Dunshee de Abranches. In 1970, the Commission adopted several resolutions condemning terrorism. Subsequently, the topic "Terrorism for Political or Ideological Purposes as a Source of Violation of Human Rights" was added to the IACHR's General Work program.³⁰⁸ Nevertheless, the Commissioners came to the conclusion that it would be inappropriate for the IACHR to draft a resolution on the General Assembly resolution on "International cooperation for the prevention and repression of terrorism", as requested by Dunshee de Abranches. It decided that it was not in its competence and regarded the Inter-American Juridical Committee as the corresponding OAS body to prepare such a document. Furthermore, the Commission made an important statement in relation to the terrorism topic proposing to "...study the economic, social, political and cultural causes of terrorism in America, in order to prepare, in due course, a full and objective opinion of this serious problem." Subsequently, the IACHR decided to continue investigating the terrorism problem by inquiring as to the socioeconomic causes or origins of this phenomenon.³⁰⁹ This was a clear defeat for Dunshee de Abranches who was considered a pro-governmental member. To review the background of terrorism against the State meant to investigate the so-

308 IACHR – Report on the Work Accomplished during its Twenty-Third Session, April 6 through 16, 1970, OEA/Ser.L/V/II.23 Doc. 27 (English), 11 December 1970, Original: Spanish, pp. 42-47.

309 IACHR – Report on the Work Accomplished during its Twenty-Fourth Session, October 13 through 22, 1970, OEA/Ser.L/V/II.24 Doc.32 (English) Rev. Corr., 5 April 1971, Original: Spanish, p. 42.

cioeconomic situation in the region that was in the majority of the cases characterized by high levels of social injustice. Here was a potential risk for the Commission: by acknowledging the socioeconomic inequality and widespread unfair distribution of wealth and land, it could come to conclusions which indirectly supported the guerrillas' justifications for their struggle. Further, it is necessary to make a distinction between the notions 'terrorists' and 'guerrilla': In comparison with the more positive connotation attributed to the term 'guerrilla,' a 'terrorist' is clearly marked negatively. Therefore, the use of the Commission's terminology is relevant, because to call an insurgent movement 'guerrilla' awarded it certain legitimacy, while terrorism has never been seen with any sympathy. Finally, the Commission did not investigate the roots of terrorism satisfyingly – but that was not its primary task.

Nonetheless, in regards to human rights violations in the Member States, the Commission's Annual Report for 1970 called terrorism the most ostensible form of violence.³¹⁰ In 1972, the Commission agreed to include a topic concerning the "political crime and its relations to terrorism", proposed by Dunshee de Abranches.³¹¹ In the report of 1973, however, the Commission confirmed that gross violations had taken place in the Member States in their battle against terrorists and guerrillas. Further, that report stated that terrorism and guerrillas had provoked the installation of 'de facto' governments and insisted in the maxim *Salus populi suprema lex esto*. Notwithstanding, the IACHR document declared that the protection of the fundamental rights must also be secured under a state of siege.³¹² It is interesting to review the terms employed in the report: First, the Commission distinguished between 'terrorists' and 'guerrillas', which might suggest that it considered the latter a more legitimate form of anti-government opposition.

310 Informe Anual de la Comisión de Derechos Humanos a la Asamblea General 1970, OEA/Ser.P AG/doc. 128, 16 marzo 1971, Original: español, p.16. The report stated: "La forma más ostensible de dicha violencia [in the continent's countries, K.D.] tiene como expresión el terrorismo, delincuencia masiva que tiende a instaurar un clima de inseguridad y angustia, con el pretexto de conquistar más altos niveles de justicia social en favor de las clases menos favorecidas."

311 Informe Anual de la CIDH 1972, OEA/Ser.P AG/doc.305/73 rev.1, 14 marzo 1973, Original: español, p. 78.

312 Informe Anual de la CIDH correspondiente a 1973, OEA/Ser.P AG/doc. 409/74, 5 marzo 1974, Original: español, pp. 27/28, 29, 30.

On the other hand, the euphemistic expression ‘de facto government’ is used – probably a proof for the strong governmental ties and conservative attitude of the Commission. On the other hand, the IACHR had to be careful with its language because calling a government ‘regime’ or even ‘dictatorship’ would have meant a clear taking of position and would surely have resulted in an outcry by the concerned government in power. In 1973 – the coup in Chile had already occurred – the Commission referred to the general situation of human rights in the region and stated that “[t]he generalized employment of violent techniques in broad areas of our continent as a measure to try to impose transformations of the social or political order has generated situations of enormous tension, characterized through grave and frequent violations of fundamental human rights.”³¹³ This extraordinary comment referred to “violent techniques” and thereby left the option to broaden the concept of ‘violence’ also to anti-government groups or guerrillas. Further, it did not clearly indicate who was responsible for such a climate of violence – the armed forces, which seized power or guerrillas that indeed wanted to change the social or political order. One year later, the IACHR Annual Report found that “[v]iolence continues to be a tool used by groups or organizations engaged in imposing, by this means, their own political choices, or by government officials and agents, with the added problem that at times these individuals operate as paramilitary or para-police organizations.”³¹⁴ This was a more accentuated statement, naming government officials, and still maintaining the picture of the violence on both sides – by governmental forces and opposition groups. The Commission clarified that the governments could not consider themselves free from responsibility for those violent acts since it was its duty to guarantee the security of its citizens.³¹⁵ This statement is of importance because it refused any excuse brought up by a government based on blaming the ‘extremist

313 “...el empleo generalizado de las técnicas de la violencia en amplias áreas de nuestro continente, como medio para intentar imponer transformaciones de orden político y social, ha generado situaciones de enorme tensión, caracterizadas por graves y frecuentes violaciones de derechos humanos fundamentales...” Informe Anual presentado por la CIDH a la Asamblea General correspondiente a 1974, OEA/Ser.G, CP/doc.399/75, 9 enero 1975, p. 24 (Translation by the author).

314 Annual Report of the IACHR For the Year 1975, To the General Assembly, OEA/Ser.P AG/doc. 632/76, 19 April 1976, Original: Spanish, p. 29.

315 Ibid. See Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

forces' for the existing violence. In other words, the IACHR found it unacceptable to fight terrorism with State terrorism. Unfortunately, this sensitive issue indirectly could be used to defend the philosophy of the Doctrine of National Security because the State was called to suppress terrorism. However, it is important to emphasize that the Commission wanted to make clear that violent acts by extremists must be prevented by the government itself and above all that terrorist acts would never justify human rights violations committed by the State. In this instance, the Commission rejected the government's justification for its own human rights abuses, so it refused State advocated circumstantial relativism.³¹⁶

The statements regarding anti-government terrorism presented in the early 1970s constitute a proof for the unbiased perspective of the IACHR. In 1976, however, the IACHR presented a very short but exceptionally critical Annual Report. The 31-page document described the situation in the hemisphere as distressing because of the "missing" people, widespread torture in many countries, mistreatment of prisoners, etc. Further, the Commission stated that a state of siege should not serve as an excuse for the indefinite detention of individuals. Again, the IACHR mentioned terrorism and reiterated its stand on governmental action on violence: "It should be stated at this time that the States have not only the right, but the duty to take the measures to prevent acts of terrorism and violence". Accordingly, the governments could not act as "...simple spectators of the violence..."³¹⁷ Once again, this statement meant that the government had to prevent violence from either political direction and could not blame terrorism to justify own abuses, but the wording could also serve as for the ideologues of the Doctrine of National Security. In its 1977 Annual Report, the IACHR reiterated the conclusions and recommendations of the foregoing report and described the concerning human rights situation in several countries as "chronic". Further, the document stated that in certain countries, human rights laws did not help the victims because of the lack of independence of the judicial system or simply the repression of

316 This expression will be explained in chapter II. 4.

317 Inter-American Commission on Human Rights – Annual Report 1976, OEA/Ser.L/V/II.40 doc.5 corr. 1, 7 junio 1977, Original: Spanish, pp. 14-17.

“all means of defending human rights”.³¹⁸ This position marked another break with the traditional human rights diplomacy that had prevailed until the early seventies. During the General Assembly debates on human rights matters and the IACHR reports, the Commission was not eager to discuss the supposedly close connection between human rights and terrorism.³¹⁹ This was a strategy carried out by several authoritarian regimes.

In contrast, during the eighties, the terrorism issue still was on the OAS agenda but the fact that some of the insurgent movements, particularly in Central America, appeared legitimate or in the case of the Sandinistas even assumed power, changed the handling of the topic. In 1985, the General Assembly adopted a resolution, which condemned terrorist methods and practices.³²⁰ The changes, which took place from the mid-eighties, were reflected in the Annual Report for 1990-1991 where a reference to State terrorism was made. The subchapter named Chile since 1973, Argentina since 1976 and Nicaragua under Somoza as examples. Further, the report stated “...that the issue of violence and terrorism has from time to time been used, either blatantly or indirectly, to justify human rights violations.”³²¹ This clearly shows how the situation had changed due to the prevailing wave of democratization: with respect to past years, the Commission could openly address State terrorism without notoriously being lectured by outraged governments.

The reports of the 1970s and 1980s marginally touched women's rights.³²² However, some country reports made references to the particular situation of women, like the reports on El Salvador (1978)³²³ or

318 IACHR – Annual Report of the IACHR 1977, OEA/Ser.L/V/II.43 doc. 21, 20 April 1978, Original: Spanish, pp. 26/27.

319 In a report of 1978, for instance, the Commission's Chairman Aguilar deplored that the Preparatory Committee of the General Assembly had recommended to treat the subjects terrorism and human rights simultaneously (IACHR files).

320 AG/RES. 775 (XV-0/85), in: Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, p. 16.

321 Annual Report of the IACHR 1990-1991, OEA/Ser.L/V/II.79 rev. 1, Doc. 12, 22 February 1991, Original: Spanish, p. 512.

322 Informe Anual de la Comisión de Derechos Humanos a la Asamblea General 1970, OEA/Ser.P AG/doc. 128, 16 marzo 1971, Original: español, p. 17.

323 Comisión Interamericana de Derechos Humanos – Informe sobre la situación de los derechos humanos en El Salvador, OEA/Ser.L/V/II.46 doc. 23 rev. 1, 17 noviembre 1978, Original: español, pp. 145-147.

Argentina (1980). In 1971, the Commission declared the use of abortions to resolve economic problems in light of the “demographic explosion” as a gross violation of human rights.³²⁴ In 1985, however, one of the few female Commissioners, Elsa Kelly, declared to separate between her personal view and the Commission’s position on abortion.³²⁵ Former Commissioner Farer states that the issue of women’s rights never came up, also due to the fact that the IACHR was more reactive in regard to cases. The Commission indiscriminately dealt with cases; it did not distinguish between male and female victims. Nevertheless, the IACHR visited some women’s detention centers and prisons.³²⁶ In the course of the drafting of the Additional Protocol on Economic, Social and Cultural Rights to the American Convention on Human Rights, several minorities – handicapped and elderly people, children etc. – were considered, but not women.³²⁷ In general, it became obvious that many international actors – also the Inter-American Commission on Human Rights – perceived women’s rights as a sort of ‘luxury rights’.³²⁸ This means that those rights were not completely ignored, but its implementation or protection merely served as an aspiration for the time when the other, ‘fundamental’ civil and political rights would be realized. On the eve of the century, it was symptomatic that the Commission’s Special Rapporteur on women’s issues was a man. This can be easily explained because there were no women among the Commission members.³²⁹ As Medina correctly concludes, “[p]romotion of women’s human rights has simply not

324 Informe Anual de la CIDH 1971, OEA/Ser.P AG/doc. 227, 17 marzo 1972, Original: español, p. 35. On the topic of abortion in Latin American jurisdictions see: Cecilia Medina – Women’s Rights as Human Rights: Latin American Countries and the Organization of American States (OAS), in: Myriam Díaz-Diocaretz/Iris M. Zavala (Eds.) – Women, Feminist Identity and Society in the 1980s. Selected Papers, Amsterdam/Philadelphia 1985, p. 70.

325 Letter from Elsa Kelly to Jeffrey G. Nutt, American University, Journal of International Law and Policy, The Washington College of Law, Washington, D.C., April 10, 1985 (IACHR files).

326 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

327 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, articles 16–18.

328 See Cecilia Medina – Women’s Rights as Human Rights, p. 64.

329 Interviews. In the late 1990s, there were unsuccessful efforts to rename the ‘American Declaration of the Rights and Duties of Man’ into a Declaration of ‘the person’.

happened at the level of the general human rights organ, that is to say, the Inter-American Commission on Human Rights.”³³⁰

Considering the previously mentioned ideological struggle between the first and second generation of human rights, the IACHR’s position on economic, social and cultural rights is of particular importance.³³¹ A former judge of the Inter-American Court of Human Rights, Héctor Gros Espiell, described human rights as an integral complex, unique and indivisible, in which the different rights were necessarily interrelated and interdependent.³³² This was the usual definition for the connection between individual and socioeconomic rights but the following question comes up: How did the IACHR handle the issue in practice? The American Declaration mentions economic, social and cultural rights without separating them from civil and political rights.³³³ The American Convention, which was adopted in 1969 and entered into force in 1978, does explicitly include socioeconomic rights but in general terms: article 26 refers to those rights mentioned in the revised OAS Charter of 1967 and suggests “achieving progressively” those rights.³³⁴ Already in 1968, economic, social and cultural rights witnessed some international publicity, particularly in regard to developing countries, when the International Conference on Human Rights in Teheran dealt with those rights.³³⁵ Former Costa Rican president Figueres provided a provocative but illustrative remark: “In theory at least, you could even have a society juridically so constituted

330 Cecilia Medina – Toward a More Effective Guarantee of the Enjoyment of Human Rights by Women in the Inter-American System, in: Rebecca J. Cook – Human Rights of Women, National and International Perspectives, Philadelphia 1994, p. 270.

331 See also: Sylvia Ann Hewlett – Human Rights and Economic Realities in Developing Nations, in: Tom J. Farer (Ed.) – The Future of the Inter-American System, New York 1979, pp. 83-114.

332 Héctor Gros Espiell – Los derechos económicos, sociales y culturales en el sistema interamericano, San José 1986, p. 16.

333 These rights are mentioned in: Article XI: Right to the preservation of health and well-being; Article XII: Right to education; Article XIII: Right to benefits of culture; Article XIV: Right to work and to fair remuneration; Article XV: Right to leisure time and to the use thereof; Article XVI: Right to social security.

334 Medina Quiroga, p. 101.

335 In the final document, the Proclamation of Teheran, the realization of civil and political rights was considered as impossible without the enjoyment of economic, social and cultural rights.

that everybody enjoys civil rights and everybody is poor.”³³⁶ Also in the inter-American system the question arose if economic, social and cultural rights had to be interpreted as ‘rights’ or merely as ‘goals’.³³⁷ While Latin Americans used to emphasize the binding character of those ‘rights’, the US hesitated to do so. Though Carter put them on his human rights agenda, Reagan categorically rejected declaring the second generation of human rights as ‘rights’.

In relation to economic, social and cultural rights, in 1970 the Commission vaguely mentioned that the guarantee of human rights would be ineffective without the dedication to a major improvement of the economic and social development. Likewise, the IACHR urgently called for an agrarian reform in accordance with article 23 of the American Declaration. The Annual Report of 1970 included as its final recommendation to the General Assembly that all governments should adopt measures to strengthen the economic conditions of the peoples.³³⁸ In the same year, the Commission urged the Member States to “...adopt standards that meet the fundamental requirements of social justice”.³³⁹ In the following year, the Commission again urged the Member States to improve the socioeconomic conditions and also called for an intensification of “...international cooperation in trade so that Latin America’s raw materials can obtain fair prices in the markets of the countries that import them.”³⁴⁰ These remarks showed the

336 José Figueres – Some Economic Foundations of Human Rights (Official UN document of the International Conference on Human Rights in Teheran, 1968), in: Laquer/Rubin (Eds.), p. 328. See the interesting scenario of two fictitious countries drawn by Farer. Farer – *The Grand Strategy*, pp. 124-131.

337 For a legal analysis of the economic, social and cultural rights mentioned in the main OAS instruments, see: Matthew Craven – *The Protection of Economic, Social and Cultural Rights under the inter-American System of Human Rights*, in: Harris/Livingstone, particularly pp. 290-306.

338 Informe Anual de la Comisión de Derechos Humanos a la Asamblea General 1970, OEA/Ser.P AG/doc. 128, 16 marzo 1971, Original: español, pp. 17, 27.

339 IACHR – Report on the Work Accomplished during its Twenty-Fourth Session, October 13 through 22, 1970, OEA/Ser.L/V/II.24 Doc.32 (English) Rev. Corr., 5 April 1971, Original: Spanish, p. 14. Also in 1970, the Commission’s chairman Justino Jiménez de Aréchaga called the right of trade unions a basic human right, although it was not attributed to an individual but to a unionist group. *Ibid.*, p. 43.

340 “The IACHR has as one of its basic purposes the protection and defense of human rights in the Americas and that one of the means to achieve such a purpose is creating the necessary environment of well-being and security through the collaboration of the countries of the hemisphere.” IACHR – Report of the Work Ac-

broader context, in which the Commission saw the human rights situation but at the same time it appeared somehow ingenuous to request such reforms in a report on human rights because the demand was directed to the industrialized world. In 1971, Commissioner Dunshee de Abranches proposed to include a recommendation to the Annual Report, urging the American governments and international cooperation “...to assure for their peoples, especially in Latin America, the effective enjoyment of economic, social and cultural rights.”³⁴¹ This suggestion mentioned the term ‘rights’ and thus was more substantive than the merely abstract call for social justice. It is ironic that it was Dunshee de Abranches who came up with this proposal: While emphasizing the terrorist threat and supporting the governments whose principal interest was to keep the status quo, he actually demanded socioeconomic *rights*. But who should concretely enforce them? In the period, in which he made the statement, “to assure the effective enjoyment” of socioeconomic *rights* for many countries, in particular in Central America, would have meant a more or less radical change of their social systems. The historical definition for such a potentially seditious development is *Revolution* – the last occurrence that Dunshee de Abranches would have welcomed.

These statements were clear signs that the Commission was somehow aware of the connection between individual rights abuses and the prevailing socioeconomic situation in the majority of Member States. Nevertheless, it did not dare to call the requested improvements ‘rights’ – save some accidental exceptions, such as the one provided by Dunshee de Abranches. However, in its 1972 report, the Commission mentioned the right to work and a fair retribution (Article XIV of the American Declaration) and the right to social security (Article XVI) and named various Member States, in which those rights were not satisfactorily assured.³⁴² During a 1973 Commission meeting, a message of Secretary General Galo Plaza was presented, in which he

complished by the IACHR during its Twenty-Fifth Session (March 1 through 12, 1971), OEA/Ser.L/V/II.25 doc.41 rev., 3 November 1971, Original: Spanish, pp. 10, 46/47.

341 IACHR – Report of the Work Accomplished by the IACHR during its Twenty-Fifth Session (March 1 through 12, 1971), OEA/Ser.L/V/II.25 doc.41 rev., 3 November 1971, Original: Spanish, p. 11.

342 Informe Anual de la CIDH 1972, OEA/Ser.P AG/doc.305/73 rev.1, 14 marzo 1973, Original: español, pp. 13, 15.

doubted that social and economic development constituted a true progress without the respect for the rights of man and freedom.³⁴³

In 1977, a General Assembly resolution requested developed States to support developing countries to participate in international trade by abolishing discriminatory and protectionist measures.³⁴⁴ Another resolution contained in the 1977 Annual Report demanded that each Member State should commit itself to "...the achievement of economic and social justice in its national and international relations."³⁴⁵ In 1978, Commissioner Tom Farer insisted on the idea that economic, social and cultural rights had to be taken into consideration for all matters and proposed to include data and statistics while referring to these rights. At a Commission session, member Monroy Cabra underlined the necessity of States with a higher development and international organizations to cooperate with less developed States in order to improve the situation in those countries. In the Special Report on the situation of human rights in El Salvador of 1978, the Commission stressed the relationship between civil and political and economic, social and cultural rights and denounced explicitly the violation of social and economic rights for the first time in a particular case.³⁴⁶ Even though it was a brief one, it was the first report that included a chapter on economic, social and cultural rights.

The El Salvador Report further referred to statistical material from the Inter-American Development Bank, so it based its findings on recognized economic data. However, as Farer remarks, he had to cautiously approach the inclusion of economic, social and cultural rights because of the more conservative attitude of his colleagues. Furthermore, Farer points out that his strategy was to include a chapter in the Annual Report, which linked violations of civil and political rights to the socio-economic conditions. Nonetheless, the Commission avoided

343 IACHR – Report on the Work Accomplished by the IACHR at its Thirty-First Session, (October 15-25, 1973), OEA/Ser.L/V/II. 31 doc. 54 rev.1, 12 June 1974, Original: Spanish, p. 2, 4.

344 AG/RES. 314 (VII-0-77), in: IACHR – Annual Report of the IACHR 1977, OEA/Ser.L/V/II.43 doc. 21, 20 April 1978, Original: Spanish, p. 69.

345 AG/RES. 315 (VII-0-77), in: IACHR – Annual Report of the IACHR 1977, OEA/Ser.L/V/II.43 doc. 21, 20 April 1978, Original: Spanish, p. 70.

346 CIDH – Informe sobre la situación de los derechos humanos en El Salvador, OEA/Ser.L/V/II.46, doc. 23 rev. 1, 17 noviembre 1978, Original: español, pp. 148-150, 152.

mentioning ‘violations’ of economic, social and cultural rights.³⁴⁷ Since 1979 the Commission exposed economic, social and cultural rights as part of the human rights concept. The Annual Report corresponding to 1979-1980 underlined the relationship between individual rights abuses and marginalization of socio-economic rights. The document confirmed “...the organic relationship between the violation of the rights to physical safety on the one hand, and neglect of economic and social rights and suppression of political participation, on the other.” This relation was considered cause and effect at the same time: repression of socio-economic rights – especially in company with the neglect of political participation – created the kind of social polarization, which would lead to terrorist acts against and carried out by the government.³⁴⁸ In general, the report continued, the extreme mass poverty as a result of the unbalanced distribution of means of production was identified as the fundamental cause of terror. Further, the Commission described its careful handling of this sensitive issue since it was extremely difficult to find the appropriate indicators to measure socio-economic rights, which also touched one of the governments’ main economic questions, to choose between consumption and investment, and thus “...between current and future generations.” Also, the document acknowledged that economic and national defense policy were both closely connected to national sovereignty.³⁴⁹ In addition, the IACHR recommended that the governments should satisfy basic needs of its populations such as health, nutrition and education, arguing that “[t]he priority of the “rights of survival” and “basic needs” is a natural consequence of the right to personal security.”³⁵⁰ Moreover, the Commission named life expectancy, infant mortality and illiteracy as useful indicators to measure the well being of populations. However, the report went further and stated that in consideration of the unequal distribution of wealth, “...an increase in national revenues does not necessarily nor by correlation mean an improvement in those indices.” This was possibly an indirect criticism of Chile’s economic policy. Finally, the document emphasized the duty of the de-

347 Interview with Dean Tom Farer, Denver, August 30, 1999.

348 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 151.

349 IACHR – Annual Report of the IACHR 1979-1980, p. 151.

350 IACHR – Annual Report of the IACHR 1979-1980, p. 152, emphasis in the original.

veloped States toward the less developed countries and recommended fighting extreme poverty.³⁵¹ This pathetic call for the implementation of socioeconomic rights was a result of the personal endeavors carried out by US Commissioner Tom Farer. He came up with the issue of social, economic and cultural rights and did not dare to call those 'rights'. A comparison between Farer's works on the topic, in particular in 1978, provides a striking similarity between his own view and the Commission's findings.³⁵² At the same time, the claim for those rights also demonstrated that the Commission obviously abandoned its appearance as a merely juridical body and became an institution with quite political observations and attitudes. Although the IACHR had always been political, the issue of socioeconomic rights constituted a particularly illustrative topic.

When Tom Farer became chairman of the IACHR in 1980, he introduced a new item in the Annual Report dedicated to socioeconomic rights. At the General Assembly in 1980, Farer admitted that the issue of socioeconomic rights was somehow awkward for the Commission since it was difficult to find 'violations' of those rights committed by the States. Furthermore, Farer called the Member States to take measures against the poverty in their countries.³⁵³ The 1980 General Assembly adopted a resolution, which called for the extension of the human rights concept towards economic, social and cultural rights. The document resolved "[t]o share the Commission's concern in stressing the importance of economic, social and cultural rights in the context of human rights for the integral development of man..."³⁵⁴ Obviously, the resolution text employed a very general language and it is not difficult to realize that this statement fits in the typical tradition of

351 IACHR – Annual Report of the IACHR 1979-1980, pp. 152, 153.

352 See, for example: Tom J. Farer – *The United States and the Inter-American System: Are There Functions for the Forms?* The American Society of International Law, Studies in Transnational Legal Policy No. 17, Washington, D.C. 1978; Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988.

353 US Assistant Secretary of State for Inter-American Affairs, Bowdler, applauded this new topic. OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II, Décimo Período de Sesiones, Washington, D.C., del 19 al 27 de noviembre de 1980, Actas de las Comisiones Primera, Segunda, Tercera y Cuarta. (Primera Comisión), pp. 18/19, 34.

354 AG/RES. 510 (X-0-80), in: IACHR – Annual Report of the IACHR 1980-1981, OEA/Ser.L/V/II.54, doc. 9 rev. 1., 16 October 1981, Original: Spanish, p. 13.

non-commitment phrases due to its non-binding character. In regard to the impact of these rights, their value can be compared with the one attributed to civil and political rights before 1973 – just a protocollary matter of delightful intentions without any substantial obligations to the Member States. The subsequent General Assembly resolutions also confirmed that economic, social and cultural rights were human rights without specifying its impact on concrete measures to implement them.³⁵⁵

Seemingly, the terminology used by the Commission could have been perceived by right-wing governments as ‘Marxist thoughts’. Moreover, the emphasis on basic needs also threatened conservative US politicians who had the reputation to be the crusaders for maintaining a Latin American status quo favorable for political and economic interests of the United States. It may be possible that this argument, used in 1979-1980, caused if not hostility, at least certain doubts about the Commission’s usefulness and impartiality for the designated members of the Reagan administration that assumed power in January 1981. In its 1980-1981 Annual Report, the Commission recognized efforts to eliminate poverty under radically different political, economic and cultural systems:

“In turn, those efforts have produced spectacular results as has been shown in those countries that have expanded public health care services at the lowest level of society, that have tackled the problem of mass illiteracy systematically, that have undertaken comprehensive agrarian reform programs or that have extended the benefits of social security to all sectors of the population.”³⁵⁶

However, the report concluded that no system had been effective to fight poverty with a decisive success. Such a statement included an indirect reference to the social benefits of the Cuban and Nicaraguan systems – a risky maneuver, if one takes into consideration the atmosphere in the hemisphere at that time: Reagan proclaimed a new conservatism resulting in a revived Cold War, right-wing regimes in the Southern Cone were still in power, Central America was in agony, and

355 AG/RES 543 (XI-0-81), in: IACHR – Annual Report of the IACHR 1981-1982, OEA/Ser.L/V/II.57 Doc. 6 rev. 1, 20 September 1982, Original: Spanish, p. 11; AG/RES 618 (XII-0-82), in: IACHR – Annual Report of the IACHR 1982-1983, OEA/Ser.L/V/II.61, doc. 22 rev. 1, 27 September 1983, Original: Spanish, p. 149.

356 IACHR – Annual Report of the IACHR 1980-1981, OEA/Ser.L/V/II.54, doc. 9 rev. 1., 16 October 1981, Original: Spanish, p. 125.

the debt crisis of 1982 was in sight.³⁵⁷ Nevertheless, the Commission's efforts to bring the topic on the organization's agenda succeeded in 1982, when a General Assembly resolution requested the General Secretariat to prepare a preliminary draft on an Additional Protocol to the American Convention on Human Rights, defining the economic, social and cultural rights. This encouraged the Commission to strengthen its endeavors in those rights.³⁵⁸

In 1983, the Commission presented its seventh and last report on human rights in Cuba to date. The document was considerably critical concerning the situation of political rights but nevertheless mentioned significant progress in regard to economic, social and cultural rights. The 1983 report was quite appropriate and mentioned shortcomings and achievements as well.³⁵⁹ Because of its sympathetic tone while referring to socioeconomic accomplishments, the IACHR received harshest criticism by Castro opponents, particularly in the US.³⁶⁰

The Commission report of 1983/1984 concluded "[w]ork, health, education, suitable housing, and the like would flow necessarily and naturally as a result of the preservation of certain individual guarantees and of the rule of democratic institutions."³⁶¹ Nevertheless, the Commission emphasized its stand on individual guarantees and political rights, which "...cannot be impaired, in any way, without attacking the dignity of the human individual." Accordingly, the Inter-American

357 Apparently in 1981, the Commission developed strategies for the promotion of socioeconomic rights, which proposed an interdisciplinary conference with participants from all social sectors to discuss the topic. *Strategies For The Promotion Of Economic, Social, And Cultural Rights*. Without author, date and place. The paper was apparently prepared in 1981 (IACHR files).

358 AG/RES 619 (XII-0-82), in: IACHR – Annual Report of the IACHR 1982-1983, OEA/Ser.L/V/II.61, doc. 22 rev. 1, 27 September 1983, Original: Spanish, pp. 37, 38. Costa Rica had proposed such an Additional Protocol in 1982. IACHR – Annual Report of the IACHR 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, p. 139.

359 IACHR –The Situation of Human Rights in Cuba, Seventh Report, OEA/Ser.L/V/II.61 Doc. 29 rev. 1, 4 October 1983, Original: Spanish, particularly pages 180-183. Maybe the essence of the Commission's findings was expressed through the following two observations: "The first is the subordination of Cuban society to the political group in power; the second is its organization designed to satisfy the basic needs of the population." Ibid., p. 181.

360 Interview with Dean Farer, Denver/Colorado, August 30, 1999.

361 IACHR – Annual Report of the IACHR 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, Original: Spanish, p. 137.

Commission on Human Rights abandoned its practice to report on economic, social and cultural rights regardless of the political system in a Member State and decidedly turned to favoring democracy. Further, the IACHR Report manifested again the close relationship between socioeconomic and civil-political rights, described as a “whole”, and said that “...the sacrifice of some rights for the benefit of others can never be justified.”³⁶² This was a strong statement but one may ask: How to handle this? As the author has stated in the introduction, it is his belief that in fact, priorities have always been decisive for the actual human rights policy. So, was this comment nothing more than just a rhetorical statement? It remains difficult to determine if the Commission was ingenuous enough to believe in a human rights policy based on the simple implementation of the interconnection of civil, political and socioeconomic rights or if it was merely a rhetorical statement.

In this context, the Commission referred to the American Human Rights Convention (1969) and the Inter-American Charter of Social Guarantees of 1948. In regard to economic, social and cultural rights, the Commission considered the Convention less as an instrument of protection and more as “objectives of economic and social development”, or a sort of guide.³⁶³ Seemingly, this statement mirrored the prevailing opinion on constitutional rights in Latin America and was exactly the position taken by the Reagan administration, which constantly refused to accept the term ‘rights’ in reference to social and economic standards. In contrast, the Commission clearly defined its stand on the question of the position awarded to these ‘rights’: “As human rights that they are, economic, social, and cultural rights ... cannot be considered as desirable goals but must be considered as realizable imperatives.”³⁶⁴ Whatsoever, the lack of precision, together with the general problem of dealing with these rights, led the Commission to conclude the inoperability of Article 42 of the Convention in practice. That article obliges the Member States to forward its reports to the Inter-American Economic and Social Council and to the Inter-American Council for Education, Science and Culture, and also to the IACHR in order to enable the latter to monitor the promotion of

362 Ibid., p. 137.

363 Ibid., pp. 138/139.

364 Ibid., p. 143.

the mentioned rights.³⁶⁵ But apparently, the Commission had not insisted very vigorously on the transmittal of such reports. In general, the IACHR discussed the problem of operability in regard to socioeconomic rights.³⁶⁶ A year later, in 1984/85, in regard to the drafting of an Additional Protocol on socioeconomic rights, the Commission agreed on the traditional trilogy of socioeconomic rights: work, education and health, which was broadened by other rights mostly related to the former.³⁶⁷ Further, the Commission considered indicators like per capita income, industrialization of capital goods or private investment as important factors for the achievement of economic, social and cultural rights. Nevertheless, it rejected to extend the 'rights' catalogue to include these issues, because it was considered inappropriate.³⁶⁸ In 1986, the Commission proposed to attribute the same system of protection as the one for civil and political rights to these three rights: trade union rights, the right to strike and freedom of education.³⁶⁹ In the same year, the General Assembly adopted a resolution on human rights and democracy, in which it emphasized democratic principles and merely mentioned "social justice" instead of economic and social 'rights'.³⁷⁰ However, a former Commissioner explains that beyond the legal work on the socioeconomic rights issue, the variety of philosophies represented by the Commission members led the topic to become secondary in its practical actions.³⁷¹

In 1989, the Commission agreed to include in its final press communiqué a reference to the economic situation describing the external debt as "...main enemy of stability and consolidation of democracy in the continent".³⁷² This was a strong statement, which clearly consti-

365 IACHR – Annual Report of the IACHR 1983-1984, p. 139.

366 IACHR – Annual Report of the IACHR 1983-1984, p. 142.

367 For example, the right to work was seen as closely linked to the right of social security. Annual Report of the IACHR 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985, Original: Spanish, p. 172.

368 This would have led to the controversial inclusion of the right to development – a step the IACHR wanted to avoid. Annual Report of the IACHR 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985, Original: Spanish, p. 174.

369 Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, p. 200.

370 AG/RES. 837 (XVI-0/86), in: Annual Report of the IACHR 1986-1987, OEA/Ser.L/V/II.71 Doc. 9 rev. 1, 22 September 1987, Original: Spanish, p. 20.

371 Interviews.

372 IACHR files.

tuted a political opinion and went beyond former postulations that described the Commission as an exclusively ‘legal body’. The 1990/1991 Annual Report referred to the conclusions drawn in the 1980-1981 Report but emphasized the denial of political rights as source of violence, not the denial of socioeconomic rights.³⁷³

In the course of the preparation of the Draft Additional Protocol on Economic, Social and Cultural Rights, the Commission requested proposals from the Member States, but merely a few responded. This was an expression of the lack of interest in the issue among the governments. The author suggests that the Additional Protocol on socioeconomic rights was an unsuccessful attempt to remedy the political-economic structure problems by law because its contents did not permit a rigorous implementation or even observance of the rights mentioned.

With a reference to the economically ‘lost decade’ of the eighties and the external debt, the Annual Report of 1991 stated that the economic crisis in many countries hampered the implementation and effective respect for socioeconomic rights.³⁷⁴ The Commission Report even went further by demanding that the ‘economic adjustments’ – clearly a reference to the so-called ‘structural adjustment programs’ of the International Monetary Fund (IMF) – must be organized without injuring the most needy and most vulnerable sectors “...those who have suffered most as a result of internal violence and recession.”³⁷⁵ Although the IMF was not mentioned by name, this was a very political statement. According to a former IACHR official, there was a question of priority during the seventies: First, the bloodbath had to stop, then the second generation of human rights could be taken into consideration. Also other Commission members and officials spoke about the necessary priority of civil and political rights when butchery takes place.³⁷⁶

However, the IACHR did not prepare any Special Report on the situation of economic, social and cultural rights in the region during

373 Annual Report of the IACHR 1990-1991, OEA/Ser.L/V/II.79 rev. 1, Doc. 12, 22 February 1991, Original: Spanish, p. 522.

374 Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81 rev. 1, Doc. 6, 14 February 1992, Original: Spanish, p. 287.

375 Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81 rev. 1, Doc. 6, 14 February 1992, Original: Spanish, p. 320.

376 Interviews.

the period of this inquiry. Such a report would have seriously challenged the Commission's impartial stand because this rights area clearly affects the basic political mainstream and even political institutions and the Member States. Therefore, it may have seemed reasonable not to write such a potentially controversial document.

In short, the issue of socioeconomic rights witnessed several phases within the Commission's work: Between 1960 and 1978, socioeconomic matters were merely considered as 'goals' and consequently rather neglected³⁷⁷, but from 1978/79 onwards the term 'rights' was used frequently and the IACHR repeatedly stressed the presumed interconnection between civil and political as well as economic, social and cultural rights. Further, since 1978, the IACHR acknowledged the nonobservance of socioeconomic rights, together with the neglect of political rights, as a main cause for violations of individual rights. In the Annual Reports of the mid-eighties, however, the emphasis on economic rights diminished and was replaced by the aspect of representative democracy – seemingly a rather unconscious approaching toward the Reagan administration's stand on human rights and democracy.

Furthermore, the IACHR worked diligently on the problem of forced disappearances, which it considered a difficult issue to deal with because of the crime's clandestine character. The General Assembly, however, adopted most of the Commission's recommendations in its resolutions. In 1983, for the first time, the Assembly declared the practice of forced disappearances a "crime against humanity" as requested by the IACHR.³⁷⁸ The US had always opposed such a terminology because of the singular meaning of the expression, which derived from its mentioning in the Nuremberg tribunals against Nazi criminals. Finally, in 1983 the US accepted the term in order to pass the resolution.³⁷⁹

377 See LeBlanc, pp. 169/170.

378 AG/RES. 666 (XIII-0/83), Annual Report of the Inter-American Commission on Human Rights, in: IACHR – Annual Report of the IACHR 1983-1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, p. 17; AG/RES 742 (XIV-0-84), in: Annual Report of the IACHR 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985, Original: Spanish, p. 12.

379 OEA/Ser.P/XIII.0.2, 14 noviembre 1983, Volumen II, Parte II, Décimotercer Período Ordinario de Sesiones, Washington, D.C., del 14 al 18 de noviembre 1983, Actas y Documentos, Volumen II, Segunda Parte, Primera Comisión, p. 154.

In 1987-1988, the Commission studied the situation of minor children of disappeared persons who were separated from their parents. This inquiry was mainly inspired by the Argentine case and the endeavors of the Abuelas de la Plaza de Mayo, the Grandmothers who have been looking for their grandchildren whose parents had disappeared. Interestingly, in reference to the Argentine junta (1976-1983) the IACHR employed the expression “military dictatorship” – a notion with which the Commission usually did not work. There were two categories of adoptions: families who did not know about the disappearance of the adopted child and those who formed part of or were somehow linked to the armed or security forces.³⁸⁰ In the course of the drafting of the Inter-American Convention on Forced Disappearances of Persons, the Commission turned to NGOs to take advantage of their experience with the phenomenon of disappearances.³⁸¹

Although the topic of indigenous rights is not discussed in this study, a remark made by the Commission appears to be of interest.³⁸² In regard to the celebration of the so-called “Fifth Centennial of the ‘Discovery and Meeting of Two Worlds’”, which meant Christopher Columbus’ arrival in the Americas, the Commission announced in 1989 to contribute to this event by proposing the adoption of an instrument for the defense of the human rights of indigenous peoples.³⁸³ This reflected the Commission’s attitude toward the celebration and in regard to the title chosen for this event. In 1989, the General Assem-

380 The ideological goal of this practice was – according to a statement of General Ramón Juan Alberto Camps, Chief of Police of the Province of Buenos Aires (1977-1978) – to avoid that the children of the disappeared grew up hating the armed forces and consequently creating a new generation of subversives. Annual Report of the IACHR 1987-1988, OEA/Ser.L/V/II.74, Doc. 10 rev. 1, 16 September 1988, Original: Spanish, pp. 332-335.

381 Annual Report of the IACHR 1987-1988, OEA/Ser.L/V/II.74, Doc. 10 rev. 1, 16 September 1988, Original: Spanish, p. 346.

382 It is a striking detail that the OAS main library is called “Columbus Memorial Library”. Further, the Organization of American States honors Isabel the Catholic Queen of Spain who sent Columbus on his mission to India with a statute in front of the entrance of the main building – an eloquent symbol for the organization’s self-comprehension.

383 The Commission wrote the following: “The fact that 1992 marks 500 years since the arrival of the Iberian conquerors on this continent offers a singular perspective for analyzing the historical elements that have shaped the problems suffered by indigenous populations.” Annual Report of the IACHR 1988-1989, OEA/Ser.L/V/II.76, Doc. 10, 18 September 1989, Original: Spanish, p. 243.

bly requested the IACHR to prepare a legal instrument concerning the rights of the indigenous peoples, for adoption in 1992.³⁸⁴

Finally, the Commission worked decisively on the extension and codification of the inter-American human rights system and its legal instruments. The IACHR mainly contributed to the drafting of the American Convention on Human Rights of 1969. During the 1980s, it prepared the draft text of the Additional Protocol to the Convention on Economic, Social and Cultural Rights as well as the draft convention defining torture as an international crime. The latter was adopted by the General Assembly in 1985. In the mid-eighties, the IACHR drafted an Additional Protocol on the Abolition of the Death Penalty. This Additional Protocol also served to demonstrate the Commission's independence from the United States that has been a traditional advocate of the capital punishment. Moreover, in 1989, the General Assembly resolved to recommend to the Commission that it study the necessary measures to improve the autonomy, independence and personal integrity of the juridical branch in order to guarantee proper investigations of human rights violations.³⁸⁵ In its 1988-1989 Annual Report, the Commission purposed a review of the American Convention on Human Rights, including a far-reaching reform, which was justified by the experience of the IACHR.³⁸⁶ This would have meant to grant the Commission legislative rights – undoubtedly an adventurous idea. In the subsequent Annual Report, the Commission again referred to this topic in order to improve the effectiveness of the inter-American system. Maybe, this can be regarded as a reaction to the decadence of the Socialist Eastern bloc and as a foreshadowing of the resolution 1080 of Santiago.

Another new topic that indicated the broadening of the Commission's approach was to analyze "Groups of armed irregulars and hu-

384 AG/RES. 1022 (XIX-0/89): Reports of the Inter-American Commission on Human Rights, in: IACHR/IACtHR – Inter-American Yearbook on Human Rights 1989, Dordrecht 1993, p. 884.

385 AG/RES. 1022 (XIX-0/89), in: Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, Original: Spanish, p. 16.

386 "In addition, if the Commission deems it appropriate, it may decide to completely revise the Convention, using the opportunity to incorporate new rights, both individual as well as collective, into the Convention, thereby perfecting the inter-American system for the protection of human rights." Annual Report of the IACHR 1988-1989, OEA/Ser.L/V/II.76, Doc. 10, 18 September 1989, p. 244.

man rights". This new item entered the IACHR's agenda due to the General Assembly resolution of 1990 proposed by Peru that dealt with "Consequences of Acts of Violence Perpetrated by Irregular Armed Groups On the Enjoyment of Human Rights".³⁸⁷

In summary, the IACHR decided to engage not only in the promotion but gradually also in the protection of human rights. Further, the failure to found local agencies in the Member States resulted in a steady cooperation with national and also international human rights NGOs. Although women's right did not play an important role during the 1970s and 1980s, the topic of economic, social and cultural rights could gain some attention, particularly between 1978 and 1981. The Commission even contributed to the drafting of an Additional Protocol concerning the aforementioned rights. In general, the Commission initially decided to promote *and* protect human rights in the hemisphere and gradually broadened its scope of issues.

After this overview of the evolution of the IACHR's positions, it is of particular interest to review its relations with the OAS main organs as well as toward the Member States.

387 In regard to this point, the Commission referred to the Geneva conventions and stated: "Another situation in which the concept of "irregular armed groups" is used is when they take actions calculated to alter a social order that they perceive as being antidemocratic and unjust and that is perpetuated through the use of some form of violence. The recent history of the hemisphere has seen situations of this type, where "subversive" or "insurgent" groups have later gone on to become the government, or have helped create the conditions for a change of government." Annual Report of the IACHR 1990-1991, OEA/Ser.L/V/II.79 rev. 1, Doc. 12, 22 February 1991, Original: Spanish, p. 509.

II. 4. The ‘Conscience of the Hemisphere’ Versus the Unconscious: The Relations Between the IACHR, the OAS Organs, and the Member States

“You created us, you elected us, we are your agents to carry out the mandate, the human rights mandate that you have given us.”³⁸⁸

Former IACHR chairman Tom Farer on the relationship between IACHR and Member States

The difference between the OAS and the IACHR budgets reveals the varying importance of the Commission and its mother organization. While the OAS had to cut back bureaucracy and reduce its staff from 1,600 (1975) to barely 1,000 (1983), the Commission’s financial resources grew and during the 1980s did not receive the deep budget cuts such as the OAS Regular Fund. Clearly, this dynamic contributed to the rivalry between the ordinary OAS machinery and the IACHR (see chapter II. 2.). During the commemoration of the 25th anniversary of the Commission’s creation, Sepúlveda remarked that “...the Commission always found echo at the OAS and backing in all its organs, which always have provided support, sympathy and encouragement.”³⁸⁹ These very optimistic words do not address the great struggles between the IACHR and some OAS organs.³⁹⁰

388 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

389 Sepúlveda said: “...la Comisión siempre ha encontrado eco en la Organización de los Estados Americanos, y respaldo en todos sus órganos, que le han prestado siempre apoyo, simpatía y alienta.” Consejo Permanente de la Organización de los Estados Americanos, Acta de la Sesión Protocolar celebrada el 27 de septiembre de 1984, OEA/Ser. G. CP/ACTA 584/84, 27 Septiembre 1984, p. 17.

390 At the 25th anniversary of the IACHR in 1984, diplomatic-political constraints apparently forced IACHR chairman Sepúlveda to stress the close relation with the OAS: “...the Commission is an emanation of the Organization of American States; we are intimately tied with it; we are an indissoluble part of it and this fact always inspires our way of thinking and our action. The success of the Commission, its efficacy, is the success and the efficacy of the very Organization.” (“...la Comisión es una emanación de la Organización de los Estados Americanos, con ella, estamos íntimamente vinculados, somos una parte indisoluble de ella y este hecho inspira siempre nuestro pensamiento y nuestra acción. El éxito de la Comisión, su eficacia, es el éxito y la eficacia de la Organización misma.” Translated to English by the author). OEA/Ser.G CP/ACTA 584/84, 27 September 1984.

As previously discussed, the IACHR was initially a rather unimportant part of the OAS and only later expanded to have an independent role. The success of the Commission and its effectiveness was not the result of the OAS' efficiency but happened in spite of the organization's inefficiency. Naturally, Sepúlveda's comments reveal the attitude of the Commission towards the OAS at a time of serious budget cuts. In general, as Medina Quiroga points out, it is obvious that the political organs of the OAS did not want the IACHR to become an observatory body on behalf of human rights, but preferred it remain more a promotional and declaratory organ.³⁹¹

The Commission's scope depended on its allies within and outside of the OAS. From an institutional perspective, the Inter-American Commission on Human Rights and the staff of its Secretariat were part of the OAS General Secretariat. Consequently, the IACHR was subject to the rules and regulations of the General Secretariat, as evidenced by the fact that many lawyers were sent to the IACHR by the General Secretariat.³⁹²

According to several interviews conducted by the author, Secretary General Galo Plaza generally supported the Commission, which did not have a very controversial role until the end of his term. In contrast, Plaza's successor, the Argentine career diplomat Alejandro Orfila, was not only a controversial personality and generous party giver but he also witnessed the crucial years of the IACHR heading the OAS.³⁹³ Orfila was elected in 1975 and left the OAS disillusioned and accused of irregularities in 1984. While Orfila was a talent with public relations, he avoided articulating a decisive position on specific aspects and reportedly cultivated a low profile on divisive issues, such as human rights.³⁹⁴ The role of the former Argentine ambassador to

Consejo Permanente, Acta de la Sesión Protocolar celebrada el 27 de septiembre de 1984.

391 See Medina Quiroga, p. 90.

392 Farer – The Grand Strategy, p. 72. See: Verónica Gómez – The Interaction between the Political Actors of the OAS, the Commission, and the Court, in: Harris/Livingstone, pp. 176, 203/204.

393 See Washington Post, April 15, 1984, p. A26.

394 See Memorandum, From: Francis X. Gannon, OAS Consultant on Public Affairs, to: Their Excellencies, OAS Permanent Representatives and Permanent Observers, Subject: Report on Effect of OAS Activities on the U.S. Press and Public, May 23, 1984, pp. 8, 15. In 1980, Orfila himself wrote that North and South Americans believed that "...it would be wrong to presume that social justice in

Japan and the United States is a very difficult one to examine: some accused him of being corrupt and a friend of right-wing dictators while others considered him to be helpful for the IACHR.³⁹⁵ Though he was accused of supporting the Argentine junta, Orfila reportedly became a passive ally of the Commission. In contrast to pictures of Orfila smiling together with Pinochet and other dictators, he actually enabled the Commission to have many liberties and to work freely. The relationship between Orfila and the Commission could be described as distant but to some extent supportive. This mutual respect and cooperation evolved over time, and was not necessarily present at the start.³⁹⁶ In 1980, the Commission's chairman, Tom Farer, thanked Orfila for his cooperation and support and repeated his judgment in an interview with the author.³⁹⁷ Also other interviewees corroborated that Orfila surprisingly was actually supportive.³⁹⁸ However, there were contrasting opinions both inside and outside the Commission. For example, former Argentine Foreign Minister Oscar Montes remarked that Orfila tried to act impartially but was under pressure from the most dominant OAS Member, the United States.³⁹⁹ In regard to his stand on human rights, Orfila seemingly preferred to arrange private meetings and to settle problems diplomatically instead of openly challenging a dictatorial regime.⁴⁰⁰ However, despite his fondness of quiet diplomacy, Orfila became the most controversial Secretary General of the OAS who has been harshly criticized for his management style and personal performance as head of the OAS. Generally, there is rea-

the long run can be achieved at the expense of basic human rights." Alejandro Orfila – *The Americas in the 1980s: An Agenda for the Decade Ahead*, Lanham 1980, p. 128.

395 See Memorandum, From: Francis X. Gannon, OAS Consultant on Public Affairs, to: Their Excellencies, OAS Permanent Representatives and Permanent Observers, Subject: Report on Effect of OAS Activities on the U.S. Press and Public, May 23, 1984, pp. 24/25.

396 Interviews.

397 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II, Décimo Período de Sesiones, Washington, D.C., del 19 al 27 de noviembre de 1980, Actas de las Comisiones Primera, Segunda, Tercera y Cuarta. (Primera Comisión), p. 39. Interview with Dean Tom J. Farer, Denver/Colorado, August 30, 1999.

398 Interviews.

399 Interview with Admiral Oscar A. Montes, Foreign Minister 1976-1978, Buenos Aires, May 17, 2000.

400 Interviews.

son to believe that he acted in various ways concerning human rights questions – in some occasions more sympathetic with authoritarian regimes, but generally passively supportive toward the Commission.

At the beginning, there was some protest from the IACHR against the first orders from the General Secretariat⁴⁰¹ but eventually, their struggle for competence was resolved and Orfila did not directly attack the military regimes but he did not decisively influence the Commission's work either. For instance, in 1977, when the Commissioners asked Orfila to substitute Executive Secretary Castañón, he agreed and after some reluctance, appointed Edmundo Vargas Carreño, nominated by the Commission, to become his successor.

The relations between Orfila's successor, the Brazilian diplomat João Clemente Baena Soares, and the Commission reportedly were not very positive.⁴⁰² A former Commission member holds that Baena Soares generally disliked the human rights issue and did not support the Commission.⁴⁰³ Baena Soares had served as representative at the OAS when the military government ruled in Brazil. Purportedly, Baena Soares did not support the Commission's work or the human rights agenda significantly.

Along these same lines, the relationship between the IACHR and the General Assembly, the most important political organ of the OAS, is of particular interest. The first resolutions of the OAS General Assembly, clearly showed how the Member States judged human rights in the region: merely as a diplomatic decoration. Those resolutions thanked the Commission for its "valuable work" and approved the respective Annual Report routinely, without discussing any particular complaint or case included in the latter.⁴⁰⁴ This was clearly a symptom

401 The IACHR's chairman Aguilar protested against an Executive Order (No. 75-13) issued by the recently elected Orfila, which put the Secretariat of the Commission under immediate dependence on the Assistant Secretary General. That order should guarantee the supervision and control of the Commission's Secretariat. Aguilar stressed that the Secretariat also was subordinated under the Inter-American Commission on Human Rights and expressed his hope that this "double dependence" would not hinder the Commission's normal functioning. Letter from Andrés Aguilar, IACHR chairman, to Alejandro Orfila, Secretary General, Washington, D.C., October 17, 1975, p. 3 (IACHR files).

402 Farer, in: Harris/Livingstone (Eds.), p. 60.

403 Interviews.

404 See: AG/RES. 53 (I-0/71), Promotion of the Observance of Human Rights in the American States, in: OEA/Ser.P/I-0.2, 30 September 1971, Volume II: OAS

of the Latin American unwillingness to interfere in domestic affairs of a country because of the potential for their own government to be blamed for similar violations as well.⁴⁰⁵ This gentlemen's agreement was not seriously challenged until the mid-1970s. Once more, this reveals that only through the notorious disregard and underestimation of its importance could the IACHR maintain its paradoxical position within the OAS system. Indeed, the IACHR gained enormous prestige through its role in the Dominican Republic as well as through its mediating function in the border conflict between El Salvador and Honduras in 1969. Until the mid-seventies, however, the Commission and its reports were ignored in a chronic manner by the political main organs of the organization. Ramírez León suggests that the combination between the reference to the nonintervention principle and the shared interest of accusable military dictatorships and US goals led to the organization's failure to question the legitimacy of dictatorial regimes.⁴⁰⁶ Nevertheless, since 1973, the IACHR quickly became the most controversial institution within the OAS. The action of the Commission in view of the coup in Chile in 1973 and the reported human rights violations under the Pinochet government helped the IACHR make its voice heard. The increasing importance of the IACHR and of the issue of human rights was also rooted in US endeavors to place more emphasis on basic rights (see chapter III.1.). In 1975 and particularly in 1976, the efforts of the US to bring the human rights issue to the OAS agenda succeeded. Before 1976, there had never been a debate on the reports of the Commission during the General Assembly Meetings. Until that year, the General Assembly merely approved the Commission's reports without any discussion

General Assembly, First Regular Session, San José, Costa Rica, April 14 through 23, 1971, p. 53; AG/RES. 83 (II-0/72); AG/RES. 106 (III-0/73); AG/RES. 154 (IV-0/74), and AG/RES. 192 (V-0/75) in: CIDH – Diez años de actividades, Washington, D.C., 1981, pp. 344-349.

405 "There was never a question about the possibility of the OAS punishing an individual member, for most Latin American governments have always considered the level of respect for human rights an internal matter." Lars Schoultz – The Carter Administration and Human Rights in Latin America, in: Margaret E. Crahan – Human Rights and Basic Needs in the Americas, Washington, D.C. 1982, p. 321.

406 José Luis Ramírez León – La OEA, los países latinoamericanos y la democracia en el hemisferio, in: Síntesis, No. 21, Julio-Diciembre 1993: El Apoyo Internacional a la Democracia en América Latina, Madrid 1994, p. 196.

and disregarded necessary steps to take for the realization of the IACHR's recommendations.⁴⁰⁷

The Commission had been isolated within the General Secretariat of the OAS and then had almost been ignored by the Permanent Council and the General Assembly. During the first 15 years of its existence, the chairman of the IACHR had not been invited to the meetings of the OAS Council, or to those of the General Assembly (since 1970), even though they dealt with the Commission's reports. In 1975, the IACHR's chairman, Andrés Aguilar, could not speak before the General Assembly because in a vote the delegations of the Member States denied his right to present the Commission's report. In 1976, Aguilar in the end did present the IACHR reports – despite a recommendation of the General Secretariat to merely send an 'observer' of the IACHR. This was despite the fact that since 1970 the IACHR represented one of the *main organs* of the organization.⁴⁰⁸

Considering these circumstances, it seems understandable that the US Congress recommended for the US State Department to strengthen the IACHR's position. The Department of State proposed to create a human rights division within the OAS General Secretariat – comparable to the Directorate for Human Rights of the European Council.⁴⁰⁹

Furthermore, the new legislation approved by the US Congress in 1974, which tied economic aid to human rights questions, elevated the IACHR not only nominally to a main organ of the OAS. In 1975, the Agency for International Development (AID) of the US State Department considered a unilateral termination of AID's work in countries with bad human rights records. Instead, the AID opted to strengthen "leading international or regional institutions" like the International Commission of Jurists or the IACHR.⁴¹⁰ The new US foreign aid decrees that gave human rights a significant position converted the

407 Héctor Gros Espiell – L'Organisation des États américains (OEA), in: Karel Vasak – Les dimensions internationales des droits de l'homme, Manuel désigné à l'enseignement des droits de l'homme dans les universités, UNESCO, Paris 1978, p. 615.

408 Wood, p. 130.

409 Ibid.

410 Department of State, Agency for International Development: Memorandum for Assistant Administrators and Heads of Offices, Subject: New Initiatives in Human Rights; Office of the Administrator Daniel Parker, Washington, D.C., August 28, 1975 (NSA files). Only the ICJ and the IACHR are explicitly mentioned by name.

Commission into the role of an arbitrary since its reports and judgments could convincingly influence the decision of the US Congress as to whether or not to provide financial support to a country.

The US support for the human rights issue and the IACHR resulted in high expectations for the General Assembly in Santiago de Chile in 1976. These circumstances and factors converted that meeting into a turning point for human rights in the inter-American system. Nonetheless, the resolution on the Commission's Annual Report stated that the situation of civil and political rights had not worsened compared to foregoing years. In 1976, Argentina's military dictatorship took power and used human rights abuses to maintain and consolidate power. Partially in response to this event, a year later, the General Assembly in Grenada spent more than three-quarters of the available time discussing the topic of human rights and terrorism. The adopted resolution that followed expressed only polite criticism.⁴¹¹ This mirrored the appeasement strategy of the Assembly, especially given the very critical IACHR report for 1976.⁴¹² On the other hand, the resolutions on the Commission documents in 1978 and 1979 could be described as more explicit and critical, particularly in regard to naming specific countries. Although there were controversies about politics and jurisdiction in other OAS institutions, in no other organ than the IACHR "...does it equal the bitterness of the attack upon the fundamental attributes of the OAS."⁴¹³

The mere fact that the General Assembly met several times in countries whose hosts were known as having governments with problematic human rights records suggests the nature of the Member States' relationship with the Commission and its general stand on human rights. The OAS Assembly met in Santiago de Chile (1976), Brasilia (November 1984), Guatemala City (1986), and San Salvador (1988). During the Carter Administration, however, Uruguay's wish to hold the General Assembly in 1978 was refused mainly through a joint Venezuelan-US effort. However, the meetings in countries whose governments were criticized by the IACHR foster the conclu-

411 AG/RES. 312 (VII-0/77): Informe Annual de la Comisión Interamericana de Derechos Humanos, in: CIDH – Diez años de actividades, Washington, D.C., 1981, p. 351.

412 In 1976, the General Assembly further obliged the IACHR only to include information on resolved individual cases and not on pending cases in its reports.

413 Wood, p. 119.

sion that Member States preferred a dubious harmony instead of singling-out a Member. As holding General Assemblies served as recognition of the concerned government, this was obviously in many instances an action that contradicted with the Commission's criticism of that particular government.

Nevertheless, since 1977/1978, the Carter administration was able to find some allies among the delegations at the General Assemblies. These combined efforts ultimately resulted in some extraordinarily critical resolutions. This was even more astonishing if the sacrosanct nonintervention principle is considered, which was extended to all means of interference, including diplomatic statements. In spite of this, Nacimiento accurately observes a step back in 1981, when the General Assembly adopted resolution 543, which again did not mention any Member State by name. Instead, this document only provided some general comments on the Commission's work.⁴¹⁴ Article 1 of resolution 543 sounds similar to the documents before 1975 – not a single State was mentioned by name, and the document merely took note of the report and thanked the IACHR.⁴¹⁵ Nacimiento explains this development due to the prevailing authoritarian rule in many Member States, which threatened their withdrawal from the OAS if a tougher resolution were adopted. The General Assembly resolutions, however, indirectly referred to this phenomenon by requiring democratic rule for the hemisphere.⁴¹⁶ In addition, it can be suggested that the military governments were indeed a majority at that time but they were encouraged by the new-elected US president Reagan, whose election had brought a bit of alleviation to the pressure placed on authoritarian rulers in the region. In comparison, the composition of the General Assembly during the late-seventies did not represent a democratic club either, but Carter's dedication to human rights and to strengthen the IACHR occasionally did make a difference.

Interestingly, the 1980-1981 Annual Report of the IACHR was subdivided into categories for rights but did not include a separate chapter on the specific situation in Member States. The reason for the

414 Nacimiento, pp. 161, 162.

415 Notwithstanding, the mentioned resolution referred to economic, social and cultural rights in article 5. AG/RES 543 (XI-0/81): Informe Annual e Informes Especiales de la CIDH, in: OEA/Ser.P/XI.0.2, 24 junio, 1982, Volumen I: Actas y Documentos, Volumen I, Textos certificados de las resoluciones, pp. 67-68.

416 Nacimiento, pp. 161, 162.

IACHR to leave out such a particular section on countries remains elusive; however, it was most likely related to the increasing conservative composition of the General Assembly and the Reagan administration's first announcements regarding human rights. Unlike the 1980-1981 report, the report of 1981-1982 was organized as usual and even contained a special section on Chile. As a reaction, several Member States fiercely protested against the return of the old practice at the 1982 General Assembly and Chile even suspended unilaterally its relations with the IACHR.⁴¹⁷ The resolution on the report, however, was disappointing because again no single State was mentioned. The resolution's lack of substance partly provoked harsh criticisms from the delegations of Mexico, Venezuela, Costa Rica, Colombia and Trinidad and Tobago. Maybe the strongest criticism on the draft resolution was pronounced by the delegate of Trinidad and Tobago, Victor Chrysostom McIntyre, who described the OAS as a "big laundry" for "soiled articles". He further rejected the 1982 resolution on the IACHR reports as a "great big whitewash" and felt that the OAS was a "big great mold".⁴¹⁸

Since 1983, the redemocratization in South America had been somewhat notable. The General Assembly resolutions mirrored this context by naming States individually again. In contrast to the 1970s, the resolutions mentioned Member States only with positive remarks, by praising their efforts to (re-) establish democracy. In general, the 1980s witnessed resolutions adopted by the highest political body of the OAS, which avoided naming States in a negative manner.⁴¹⁹ Clearly, much of the 1980s was a 'lost decade' for solid OAS human rights policy.

On the contrary, in the General Assembly resolution on the 1990-1991 Annual Report of the IACHR, the highest OAS organ "endorsed" the document.⁴²⁰ In the decades before it had merely opted for a "taking note" of the Commission's Annual Reports. This mainly was

⁴¹⁷ Medina Quiroga, p. 294.

⁴¹⁸ OEA/Ser.P/XII.0.2, 29 julio 1983, Volumen II, Parte II; Duodécimo Período Ordinario de Sesiones, Washington, D.C., Del 15 al 21 de noviembre de 1982, Actas y Documentos, Volumen II, Segunda Parte, Actas de las Comisiones (Primera Comisión), pp. 125, 127, 128, 129.

⁴¹⁹ See Nacimiento, pp. 162-164.

⁴²⁰ AG/RES. 1044 (XX-0/90), in: Annual Report of the IACHR 1990-1991, OEA/Ser.L/V/II.79 rev. 1, Doc. 12, 22 February 1991, Original: Spanish, p. 22.

the case because of the cumulative developments in the late 1980s and early 1990s, such as the Sandinistas' election defeat, the beginning transitions to democracy in Paraguay and Chile, the entry of Canada into the inter-American system and last but not least, the end of the Cold War.

In sum, there were some so-called 'gentlemen's agreements' that affected the human rights issue: until the mid-seventies it was agreed upon not to discuss the IACHR reports at the sessions of the political main organs of the OAS.⁴²¹ Another apparent gentlemen's agreement was that no controversial report should be prepared on the important Member States of Mexico and Brazil.⁴²² Although the Commission grew into a more important role from 1975, the situation with the General Assemblies continued to be a difficult one. As Nobel Peace Prize Winner Pérez Esquivel remarks, although the Commissioners have the best intentions, the decisions are eventually made by the governments.⁴²³ The Member States perceived the Commission very differently – some States honestly recognized and honored its work, others tried to use the Commission, and the ones that were frequently blamed attempted to attack it with different but usually not very original and convincing strategies. In this context, the Commission always had to look for allies. But at the same time, it was indispensable to watch out for those who merely sought to use the Commission for political ends. However, it is necessary to recall that from the mid-seventies to the mid-eighties, authoritarian regimes often constituted majorities in the General Assembly. Moreover, a consistent human rights policy should include other procedures than the mere adoption of critical resolutions. However, even the latter proved to be difficult among many Member States that feared an 'intervention' that threatened the political status quo in their country.

Thus, besides the relationship between the Commission and some political organs of the OAS, the relations between the IACHR and the Member States are of extraordinary importance to understand the possibilities and limitations of human rights protection in the inter-American system. The Commission's most obvious instrument to

421 See Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988, p. 77; Kokott, pp. 91/92.

422 Interviews.

423 Interview with Adolfo Pérez Esquivel, Buenos Aires, June 16, 2000.

highlight human rights abuses was the mentioning of a country in the IACHR Annual Reports or in a separate Special Report, which attracted even more attention. The latter was usually based on an on-site observation that by itself also frequently enjoyed a high public attention – not only in the concerned country – and consequently was feared by the governments. Further, some governments even sought to welcome the IACHR in its territory in order to demonstrate its exemplary degree of collaboration, or to show that its human rights practice was not vulnerable.

The Annual Reports of the early 1970s dealt above all with Cuba, Haiti, and Brazil, but also with Nicaragua, Paraguay and Guatemala. A different proceeding than the Annual Reports was applied in regard to the Special Reports, which usually referred to the situation in a single country. The concerned State received the country report first in order to formulate a response within a certain time limit (90-180 days). If the government in question did not respond within this period, the IACHR decided to declare the alleged violations to be true, although occasionally there were extensions of this time limit. This method guaranteed for the governments that the complaints were handled quietly and that the opportunity was presented for a friendly settlement of the problems. However, there were also complaints by several Member States that the Commission had launched their reports to the media before the end of the deadline in order to increase the public pressure on the government. Among the most important reports produced as a result of an on-site visit within the period of this inquiry are those on the human rights situation in Chile 1974, Nicaragua 1978, and Argentina 1980.

The most common activity that preceded a Special Report on a particular Member State was an on-site observation. This investigation in the physical territory of a Member State accused of human rights violations constituted a particularly sensitive issue because the proud Latin American elite as well as the armed forces considered its institutions and the very native soil of the country as the ultimate symbol of national sovereignty.⁴²⁴ Therefore, an investigation carried out by a group of foreigners represented a type of interference in the ruling classes' habit of living their own reality. Ironically, it is even more remarkable that no other intergovernmental body for the human rights

424 See Kokott, p. 94.

protection had an experience like the IACHR with regard to on-site observations.⁴²⁵ Already the term *in-loco* visits or *in-situ* visits was criticized because of the positive connotation of the expression 'visit'. In contrast, it was seen rather as a kind of control or investigation. Therefore, the correct term was not 'visit' but 'observation'. The Commission's on-site observations varied in duration, number of the participating members of Commission and Secretariat, media interest and impact. It is important to note that unlike the case of individual complaints, the general situation of human rights in a Member State did not require the exhaustion of domestic remedies (see chapter II.1.). This in fact was an important provision.

The Statute provided a legal security for the *in-loco* inquiries since it allowed the Commission to convene a meeting in each of the Member States, if the latter's government permitted such a gathering. According to the Statute, the Commission was empowered to move its headquarters temporarily from Washington, D.C. to any other Member State. The Commission also developed other interesting alternatives which were not explicitly covered by the Statute. For instance, the IACHR requested Member States' permission for a visit of a sub-committee, a rapporteur for a special case or for the Executive Secretary. This included the advantage that information could be gathered without the presence of all members and also meant a financial relief. This method provided an advantage for the concerned governments: Usually, the visit of a single person or a small group provoked less attention due to the fact that officially, it was presented not as a visit of 'the Commission.'

Nevertheless, until 1975, there was no regulation dealing with on-site observations. As a result of the difficulties under which the Commission had to operate during its on-site investigation to Chile in 1974, it prepared a set of regulations for on-the-spot observations. This was designed to help the Commission conduct future visits more effectively.⁴²⁶ It is important to emphasize that the Commission did not agree on any restrictions on its on-site investigations. This fact ex-

425 Edmundo Vargas Carreño – Las observaciones *in loco* practicadas por la Comisión Interamericana de Derechos Humanos, in: OEA (Ed.) – Derechos Humanos en las Américas, Washington, D.C. 1984, p. 290. Tom Farer – The Grand Strategy, p. 76.

426 These Regulations were issued on October 15, 1975. Medina Quiroga, pp. 266-268; LeBlanc, p. 155.

plains that some Member States invited the Commission without a subsequent inquiry *in loco* since the government had insisted on pre-conditions that were unacceptable for the IACHR.⁴²⁷ Furthermore, Luis Reque, the Commission's first Executive Secretary, proposed to exclude nationals and citizens of the countries in which an investigation took place.⁴²⁸ This might have been directed against the Chilean Bianchi who was supposed to act on behalf of his country's government since Reque's trip to Santiago in October 1973 (see chapter III.1.). Vargas Carreño, former Executive Secretary of the IACHR, states that the number of participating members and staff lawyers mainly depended on the geographic extension of the concerned Member State but also of the importance or complexity of its human rights problems.⁴²⁹ In the early seventies, the Commission gathered in Chile and Colombia by invitation of the respective governments and not in order to investigate the human rights situations in those countries.⁴³⁰

Usually, the Commission issued a press release after its arrival in a Member State to inform the public about its presence. This also served to encourage possible petitioners to bring their complaints before the Commission during its stay in the respective country. Further, the Commissioners met with members of the government, and members of political parties, the judiciary, the armed forces, the Church, human rights NGOs and with representatives of other social groups. The variety of meetings was designed to obtain an objective perspective of the situation in the concerned country. Furthermore, the IACHR members and lawyers visited detention camps and prisons and other places where human rights violations had reportedly occurred. During its transcendental on-site visit to Chile in 1974, conversations with prisoners constituted one of the most impressive testimonies of the situa-

427 For instance, the governments of Argentina before 1978/79 and El Salvador during the 1980s sometimes employed this strategy to gain public recognition for a formal 'invitation'.

428 Letter from Luis Reque, Executive Secretary, to Andrés Aguilar, Chairman, Washington, D.C., March 3, 1975 (IACHR files).

429 Vargas Carreño, p. 295.

430 The meeting in Colombia in 1973, where the IACHR hold its sessions in Bogotá and Cali, was also to commemorate the 25th anniversary of the signing of the American Declaration on Rights and Duties of Man. IACHR – Report on the Work Accomplished by the IACHR at its Thirty-First Session, (October 15-25, 1973), OEA/Ser.L/V/II. 31 doc. 54 rev.1, 12 June 1974, Original: Spanish, p. 1.

tion of human rights in that country. Before the Commission left a Member State's territory, it used to transmit preliminary recommendations to the government and a press release on its preparatory conclusions, including – if provided – the government's comments.⁴³¹

During the years of the Carter administration (1977-1980), the Commission sent special committees to conduct on-site observations, which usually included at least two members of the 'progressive' faction in the IACHR. This can be seen as an attempt to assure an objective, or even critical approach and report on the in-situ investigation.⁴³² On the other hand, the participation of more progressive Commissioners in the investigations *in loco* must also be seen as a result of the higher level of commitment and the activism of those personalities.⁴³³ During the period between 1974 and 1981, the Commission mainly visited South American countries (Chile, Argentina) and Central American States (Nicaragua, El Salvador, Panama). During the eighties (1981-1990), the on-site investigations realized concentrated on Guatemala, Nicaragua, Suriname and Haiti. The reports until 1981, however, predominantly focused on Member States of the Southern Cone region: Argentina, Colombia, Chile, Paraguay, and Uruguay. During the 1980s, the Special Reports covered the human rights situation in Guatemala, Haiti, Peru, Paraguay and Suriname.

In 1990, the Commission conducted three on-site observations between January and April (Guatemala, Paraguay and Haiti). A year later, the changed situation became clear when several governments expressed their readiness for an on-site visit of the Commission to

431 See Kokott, pp. 108-109.

432 For example, the Special Committee that visited El Salvador in 1978 was composed by Dunshee, Volio Jiménez and Farer. Tom Farer, Andrés Aguilar, Fernando Volio Jiménez represented the sub commission in Panama – exclusively 'progressive' members. The on-site observation in Nicaragua was conducted by Aguilar, Dunshee, Carlos García Bauer, Farer, Volio Jiménez and Monroy Cabra.

433 This becomes obvious when the Argentine case is reviewed. Evidently, that on-site investigation was too important even for the less progressive and activist members so they probably joined the Special Committee in order to guarantee a sort of political 'counterbalance'. The group that visited Argentina was composed by Andrés Aguilar, Luis Demetrio Tinoco Castro, Marco Gerardo Monroy Cabra, Carlos Dunshee de Abranches, Tom Farer and Francisco Bertrand Galindo.

take place in their countries.⁴³⁴ This was apparently an attempt to confirm the democratic rule in the concerned Member States by an IACHR visit.

Interestingly, Margaret Ball wrote in 1969 that “[f]or some reason – happily – the protection of human rights has been relatively immune from the stigma of “intervention” which has hampered the activity of the OAS in other directions.”⁴³⁵ This comment almost seems ironic with regard to the battles fought by dictatorial regimes and the Commission since 1973. The nonintervention principle has always served as a primordial explanation for all kinds of regimes to reject the Commission’s findings and accusations.

In general, military governments often supported each other against human rights allegations brought up at the General Assemblies. The voting behavior sometimes showed patterns of diplomatic agreements. However, the military regimes did not consistently vote as a bloc.⁴³⁶ In 1977, when the Carter administration began to fortify the IACHR, Mexico assured full support for the Commission’s financial strengthening. Venezuela, however, feared a bureaucratization and did not want to create permanent positions within the IACHR Secretariat, but spoke on behalf of on-site investigations. Guatemala joined Venezuela in its support for observations *in loco*, and the delegation of El Salvador had received orders to support the IACHR’s strengthening as well.⁴³⁷

The subsequent part summarizes some typical behavior pattern or defense strategies of OAS Member States confronted with the Inter-American Commission on Human Rights. In general, the communication between the IACHR and the concerned governments was quite polite and used the typical diplomatic language. The Commission always thanked a government, which had allowed an on-site observation or cooperated with it in other ways, although the Commission report would clearly criticize its practices. Sometimes, however, this diplomatic politeness disappeared, in particular throughout the confronta-

434 The governments of Colombia, El Salvador, Guatemala, Peru and Nicaragua turned to the Commission. Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81 rev. 1, Doc. 6, 14 February 1992, Original: Spanish, p. 11.

435 Mary Margaret Ball – The OAS in Transition, Durham 1969, p. 373.

436 A former Chilean OAS diplomat rejects the thesis of a cooperation between Member States ruled or controlled by the armed forces. Interviews.

437 IACHR files.

tions at the embattled General Assemblies during the Carter administration. Here it is useful to add a new expression to the theoretical debate on universalism versus relativism of human rights. It merely constitutes the tentative introduction of a term that pretends to describe a sort of typical 'Latin American relativism'.

One of the reasons for the creation of the IACHR was the situation in Cuba. Since the Cuban government had emphatically promoted human rights in 1959, it was somehow ironic that later on the country became the main target of accusations.⁴³⁸ Many complaints directed to the Commission from exiled Cubans in Miami led the IACHR to prepare its first report on Cuba based on testimonies from Cuban refugees in Florida. The Cuban government refused to cooperate with the Commission due to the fact that Cuba was excluded from the inter-American system. The expulsion of Cuba's 'present government' in 1962 was not a reaction primarily based on human rights violations of the Castro regime – the IACHR played no role for this decision.⁴³⁹ There were unofficial attempts to initiate a dialogue between the Commission and Havana⁴⁴⁰ and considerations how to reach an invitation for a visit from the Cuban government⁴⁴¹, but in general, those efforts were not successful at all.⁴⁴² The Castro regime did not allow an on-site visit and in general rejected all reports without any specific comment.⁴⁴³ On the whole, almost all Latin American Member States criticized the handling of the situation of human rights in Cuba. In addition, many of them had requested to reincorporate that Caribbean country's government into the organization. This was the crucial point: no few governments represented in the OAS argued that the IACHR did not possess a proper mandate to blame Cuba's human rights situation since the government had been expelled from the organization in 1962. The IACHR consequently argued that the State of

438 Kokott, pp. 28-30; Medina Quiroga, pp. 185-219; LeBlanc, pp. 107-112.

439 Medina Quiroga, p. 217. In 1962, the OAS – pushed by the US – decided to declare Cuba's system as incompatible with the main goals of the organization and subsequently excluded the 'present government' of Cuba.

440 For instance, Letter from Manuel Bianchi, IACHR chairman, to Raúl Roa, Minister of Foreign Relations, Havana, Cuba; Personal y Confidencial, Washington, D.C., May 11, 1966 (IACHR files).

441 For instance, in 1989. IACHR files.

442 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

443 See LeBlanc, pp. 107-112; Medina Quiroga, pp. 185-219.

Cuba was still a passive OAS Member although its government was excluded from participation in the organization. Furthermore, the Cuban case once more showed that the IACHR depended on petitions – the strong Cuban exile community in Florida provided plenty of cases that could not be ignored.⁴⁴⁴ Nevertheless, it seems more than probable that the IACHR had to handle the Cuban case in order to satisfy conservative critics and to avoid any complaints about a possible lack of impartiality. Moreover, the United States frequently imposed the unofficial demand to continue monitoring the human rights situation in Cuba in order to receive a political instrument to denounce the Castro government. Reportedly, this requirement occasionally went along with a conditioning of additional US financing. However, because of the categorical rejections of IACHR complaints on the part of the Cuban government, the Commission could comply with its unwritten duty to demonstrate political impartiality without having the problem of entering in the sensitive field of tension between rights of the first and the second generation. The Cuban reports before the eighties were rather poor and dealt with sometimes outrageous legends invented by exiled Cubans. The 1983 report, however, was actually a comparatively good study that went beyond the legal view.

Before the coup d'état in September 1973, the Commission seemingly kept up relatively good relations with Chile. In early 1972, the IACHR meeting took place in Viña del Mar following an invitation from the Chilean government. In the opening of that session, Commissioner Sandifer deplored the absence of member Justino Jiménez de Aréchaga because of his bonds to Chile where he had studied, "...and his regard for the President of the Republic, Dr. Salvador Allende." Moreover, Sandifer praised Chile's history and called it "...a nation where freedom and the dignity of man are cherished."⁴⁴⁵ Nevertheless, the US Commissioner Sandifer cannot be described as a friend of Socialism. In the early years of the IACHR, he stressed the important relation between human rights and the exercise of representative democ-

444 See: Republic of Cuba, Ministry of Foreign Relations/Information and International Agencies Departments – What is the OAS?, Havana 1969 (?); F.V. García Amador – La cuestión cubana en la OEA y la crisis del sistema interamericano, Miami 1987; Carlos Lechuga – Itinerario de una farsa, Havana 1991.

445 IACHR – Report on the Work Accomplished by the IACHR During its Twenty-Seventh Session (February 28 through March 8, 1972), OEA/Ser.L/V/II. 27, Doc. 42 rev. 1, 25 May 1972, Original: Spanish, pp. 1-3.

racy. After the 1973 coup, the Chilean authorities cooperated with the Commission but when the IACHR reports turned to be very critical, the Pinochet regime opted for attacking the Commission at the political, institutional and also personal level. Until 1976, Chile carried out a campaign against Executive Secretary Luis Reque who resigned in 1976 (see Chapter III.1). In 1980, the Chilean government attacked IACHR chairman Tom J. Farer. Further, the government occasionally suspended cooperation with the Commission for a certain time as an expression of its protest against judgments, which were perceived as provocative and biased. In other times, the Chilean government self-promoted its good relations and exemplary cooperation with the IACHR. The Chileans created a human rights division at the Foreign Ministry to deal with complaints brought up from abroad, which explains why the Chilean rebuttals are relatively sophisticated in juridical terms, compared to other regimes' criticism. Generally, the Chilean government always sought to provide information and thus was eager to dilute allegations by juridical and diplomatic endeavors. In accordance, a former human rights advisor at the Foreign Ministry in Santiago judged the relationship with the Commission as 'normal' and less politicized. Consequently, the Chileans did not attack the IACHR as harsh as it attacked other international human rights entities.⁴⁴⁶ Moreover, the highly advanced human rights bureaucracy in Santiago attempted to fight the IACHR with proposals to 'reform' the Commission. Although this attempt was eventually a fruitless effort, the Chileans went further than merely defending themselves against the charges by attacking the IACHR at the institutional level.

Since the Uruguayan military coup in 1973, the IACHR had received numerous cases reporting serious human rights violations. The governments of Uruguay and Paraguay provided official pseudo-cooperation and de-facto denial (see Chapter III. 2.). Neither Paraguay nor Uruguay permitted an IACHR on-site observation. Both governments presented different excuses to avoid such an investigation, mostly referring to technical or juridical but also to political conditions that would not allow a Commission's visit. As a result, the Commission prepared a report on Paraguay and another one on Uruguay in 1978 – without previous on-site observations. At the General

446 Interviews.

Assembly in 1978, both reports provoked angry reactions and strong criticism from the concerned governments.

In 1978, US president Carter convinced the regime of General Romero in El Salvador to permit an IACHR investigation. Subsequently, the relations between the Salvadoran governments and the OAS or the Commission were also indirectly affected by US policy. The relationship between El Salvador and the IACHR during the 1980s is subject of chapter IV. 3.

Nicaragua's relationship with the Commission must be divided into the periods of president Somoza's dictatorship and the rule of the Sandinistas. Dictator Somoza's regime invited the Commission due to the growing pressure from the United States and then was ousted by the guerrilla forces also as a result of a devastating IACHR report. The Sandinistas initially welcomed the Commission and showed a remarkable grade of cooperation by permitting two visits. Later on, when the IACHR reports became more critical, the relations with Managua cooled off.

There were two Special Reports on Panama: Both had to do with US policy. In 1978, the Panamanian military regime under president Trujillo invited the Commission to conduct an on-site observation. This inquiry also served to distract the conservative opposition in the US against the Panama Canal treaties. In 1989, the IACHR published another report on Panama's human rights situation, which preceded the US invasion against the government installed by Washington's enemy Manuel Noriega.

The Argentine case is a particular one, which is addressed in chapter III. 3. The Chilean decision to permit an IACHR observation in situ in 1974 was seen as a fault in Buenos Aires, which had prevented an earlier visit by the IACHR to Argentina. During the 1980s, the law decrees on human rights violations during the military rule were discussed by the Commission. The IACHR dealt with the Argentine laws of 'due obedience' and 'full-stop' (punto final) as well as the Uruguayan law on 'caducidad'.⁴⁴⁷ Accordingly, the Argentine case in general and the contributions by Argentine NGOs in particular in-

447 Annual Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, Original: Spanish, p. 12.

spired the IACHR's handling with human rights violations of the past during the second half of the 1980s.⁴⁴⁸

The IACHR did not address Mexico or Brazil the majority of time, which were the biggest and politically most important countries to the region and the US.⁴⁴⁹ In regard to Brazil, the Annual Reports focused more on individual cases. In the early 1970s, however, the IACHR unsuccessfully tried to elevate Brazilian human rights abuses on the organization's agenda but failed due to an internal power struggle within the organization. Within the period of this investigation, the IACHR did not prepare any Special Report on Brazil. The significance of Brazil in Latin America coupled with the emphatic resistance of the Brazilian Commissioner, Dunshee de Abranches, further provided preliminary explanations for this deficiency.⁴⁵⁰ Nevertheless, the Commission approved several resolutions on individual cases concerning Brazil despite Dunshee de Abranches' opposition, always expressed by a "dissenting vote". In general, the Commission only handled individual cases concerning the dictatorship in Brazil from 1964-1985⁴⁵¹ and did not mention the student massacre in Mexico City that took place in 1968.⁴⁵² Former Secretariat officials explain that within the

448 See Klaas Dykmann – Die ganze Wahrheit und nichts als die Wahrheit? Die Organisation Amerikanischer Staaten und die Aufarbeitung von Menschenrechtsverletzungen in Lateinamerika, in: Thomas Fischer/Petra Bendel (eds.) – Konfliktive Geschichte. Die Erinnerungen an Diktaturen und Bürgerkriege in Lateinamerika (to be published in 2003).

449 In 1978, the Executive Secretary told the Brazilian Commissioner Dunshee that he would like to hire a Brazilian lawyer. However, the former explained, due to the fact that the IACHR had no concerns of human rights abuses in a Portuguese-speaking country, such an attorney would not have much occasions to use his own language. Letter from Edmundo Vargas Carreño to Carlos Dunshee de Abranches, Vice Chairman, Washington, D.C., March 14, 1978 (IACHR files).

450 Interviews.

451 See Washington Post/Potomac, December 12, 1976, p. POT 14, p. 62. In 1977, Brazilian officials told US Assistant Secretary of State for Inter-American Affairs, Todman, that they would prefer the IACHR to teach human rights practices than to punish OAS Member States. INR Weekly Highlights of Developments in Human Rights, No. 6, May 23, 1977: Latin America (NSA files), p. 2.

452 Although it was the Commission's practice only to mention cases or the situation in a particular country if it had received petitions in this regard, a part of the Inter-American Yearbook on Human Rights remains interesting: The Yearbook soberly explained that "[b]ecause of certain difficulties which arose in connection with the University of Mexico toward the middle of 1968, it was necessary to delay the Seminar [on human rights] until January through March 1969." Inter-

period of this investigation no Special Report was published on either Brazil or Mexico given the urgent situation in other regions.⁴⁵³ In general, however, after the fruitless enterprise to highlight the Brazilian case in the early 1970s⁴⁵⁴, the Commission did not cover the human rights situation in Brazil as it did in other Member States.⁴⁵⁵ Mexico traditionally defended human rights internationally, while leaving out its own domestic situation.⁴⁵⁶ According to a former Commissioner, to address human rights violations in Mexico “was really sort of forbidden”.⁴⁵⁷ In the late eighties, after a long honeymoon between the IACHR and the supporting Mexican governments, the Commission discussed how to deal with electoral cases concerning Mexico in the mid-eighties.⁴⁵⁸ It seemed that at first the IACHR shied away from working on Mexican electoral cases. In the early 1990s, this prudent handling of Mexican vote-rigging changed and understandably provoked harsh criticism from Mexico.⁴⁵⁹ On the other hand, Mexico supported the Commission during its famous phase from 1976-1981. This may seem contradictory, because Mexico has been known as the strongest defender of national sovereignty, but it actually helped decisively – if Mexico itself was not concerned.⁴⁶⁰

Unlike other countries in the region, Venezuela and Costa Rica counted as traditional advocates of democracy and human rights. In fact, Venezuela was the strongest supporter of human rights at the OAS and of the IACHR during the 1970s and 1980s. Costa Rica also emphatically backed the Commission and supported the cause of hu-

American Yearbook on Human Rights 1968, General Secretariat of the OAS, Washington, D.C., 1973, p. 21.

453 Interviews.

454 Washington Post, March 20, 1974, p. A18.

455 See: Tom Farer – The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox, in: Harris/Livingstone (Eds.), p. 45.

456 Ana Covarrubias Velasco – El problema de los derechos humanos y los cambios en la política exterior, in: Foro Internacional, Vol. XXXIX, Octubre-Diciembre 1999, No. 4, 158, p. 438, see also: p. 438, footnote 33.

457 Interviews.

458 Letter from Edmundo Vargas Carreño, to Marco Tulio Bruni Celli, Chairman, Washington, D.C., August 10, 1989 (IACHR files). Interviews.

459 See, for instance, OEA/Ser. G, CP/ACTA 818/90, 18 mayo 1990, Acta de la sesión ordinaria celebrada el 18 de mayo 1990, p. 40. Washington Post, June 13, 1990, p. A33/A34

460 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

man rights in the inter-American system. However, in the eighties, Costa Rica's fear of the Sandinistas at times modified the government's neutral stand on the issue in Central America. On the other hand, Costa Rica hosted the Inter-American Court of Human Rights and even brought a case before the Court against itself. This leads a former Commission official to describe Costa Rica's position as an attitude of "excessive honesty," which ultimately caused problems because of the priority of worse cases.⁴⁶¹

The relation between the US and the Commission was a very special and extremely close one. The mere fact that since the creation of the IACHR, it has been headquartered in the US capital Washington, D.C. already shows the obvious ties between the human rights institution and its host. Furthermore, the US member of the Commission was always an important figure for the Commission, and was responsible for giving it legitimacy within the US and credibility as a true inter-American body within the Latin American countries. Human rights expert Donnelly holds that the success of the IACHR mainly stemmed from US support.⁴⁶² There have been various attempts from US governments to use the Commission for its goals. On the other hand, the US has also been accused by the IACHR – in particular for complaints of minorities brought up by Latin Americans in the US.⁴⁶³ Nevertheless, the denunciations against the US government were relatively few and far less serious in comparison to those raised against many Latin American States during the period of this study. However, it is also worth mentioning that the Inter-American Commission on Human Rights and the OAS have always been widely unknown in the United States. The IACHR repeatedly recommended that the General Assembly declare the practice of forced disappearances a "crime against humanity".⁴⁶⁴ This wording was continuously opposed by the US delegation. After the entry-into-force of the American Convention on Human Rights, the State Department named provisions regarding the right to life and the compensation for victims of injustice as problematic for a possible US ratification of the Convention because of the country's

461 Interviews.

462 Jack Donnelly – *Universal Human Rights in Theory and Practice*, Ithaca, NY 1989, p. 216.

463 See LeBlanc, pp. 138-147.

464 See, for instance, IACHR – Annual Report of the IACHR 1982-1983, OEA/Ser.L/V/II.61, doc. 22 rev. 1, 27 September 1983, Original: Spanish, p. 33.

federal system and the “...reserved powers of the states in education, marriage and law enforcement.”⁴⁶⁵ A former high-ranking OAS official presented a typical description of the US position toward the OAS: that they ignored it in general, but at times they used the OAS for their own ends.⁴⁶⁶ Furthermore, Ex-Commissioner Tom Farer sees a shift from when the Reagan administration came into office in 1981. Farer described the relations between the Commission and the US government during his term as IACHR chairman (1980-1982) as harsh.⁴⁶⁷

Naturally, throughout the years the character of relations between the IACHR and the Member States underwent certain alterations. In its 1991 Annual Report, the Commission made a relatively brusque statement, which might be explained by the circumstances favorable for democracy and human rights at that time. It mentioned that it must surely be shameful for those States to appear and to continue appearing permanently in this section. The mentioned States were Cuba, El Salvador, Guatemala, Haiti, Nicaragua, Panama and Suriname.⁴⁶⁸ Such a clear statement would have caused stronger opposition in previous years, but apparently the mood in the hemisphere had changed. On the other hand, those countries did not count as ‘important States,’ neither in their size nor with regard to their geostrategic position. In general, there is not much imagination needed to understand that it had always been easier for the Commission to accuse ‘small’ countries than the bigger ones.

465 Secretary of State, Washington, D.C., to all American Republic Diplomatic Posts, Subject: ARA Weekly Highlights July 12-19, July 20, 1978, p. 2 (NSA files). With regard to this general topic, See: Bruno V. Bitker – The United States and International Codification of Human Rights: A Case of Split Personality, in: Natalie Kaufman Hevener (Ed.) – The Dynamic of Human Rights in U.S. Foreign Policy, New Brunswick, New Jersey 1981, pp. 77-99.

466 Interviews.

467 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999. “The Reagan administration had turned Latin American policy over to people I regarded as despicable.”

468 Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81 rev. 1, Doc. 6, 14 February 1992, Original: Spanish.

Excursus: Circumstantial relativism – a term for an ambiguous human rights argumentation

To aid in this discussion, it is helpful to put the human rights foreign policy in Latin America into the common theoretical discourse. While realists of international affairs hold that human rights should not be pursued in national foreign policy because the latter must be seen as deriving from national interest defined in terms of power, statism considers "...an active concern for the human rights practices of other states inconsistent with the fundamental principle of state sovereignty." Finally, relativism criticizes international human rights policy as a form of moral imperialism.⁴⁶⁹

In this context, the Latin American States have long been statist in regards to international human rights. When the United States temporarily abandoned its traditional political outlook of a more realist foreign policy and really began favoring human rights, many Latin American governments turned to partial relativism. Washington's inconsistent human rights policy mostly walked along with the realist approach if necessary, while Latin America often employed the statist argumentation, sometimes combined with relativist arguments. Thus, the US realism defending a foreign policy that partially tolerated human rights abuses of a friendly government in certain international situations was frequently the consequence and often simultaneously also the natural concomitant of national statism from repressive US allies in the region. However, the particular pattern of Latin American relativism sets the region apart from customary argumentations of cultural relativism. Therefore, the term 'circumstantial relativism' strives to describe the tendency to justify temporary violations of human rights with 'special circumstances'.

As seen in the introduction, it is common knowledge that in Latin America a discrepancy between constitutional provisions and law practice has existed. Human rights is no exception and maybe an even more striking example for the gap between the constitutional postulation of rights and its actual substance in reality. While Asian and African States tend to defend their sometimes diverging or categorically different human rights practice with cultural relativism by arguing that

469 Jack Donnelly – *Universal Human Rights in Theory and Practice*, Ithaca/NY 1989, p. 229.

for societies in those regions the Western concept of individual rights is not applicable, Latin America somehow distinguishes itself from this concept.

Since the independence of the Latin American countries they have steadily built a sophisticated regional system of international law and norms that regulated their international and internal political behavior. Latin America has the most sophisticated human rights system among developing regions compared with the West European-North American concepts.⁴⁷⁰ The independent States of Latin America have always possessed human rights constitutions and as a result they have viewed those rights as part of its independent history. The Pan American movement that began in the late 19th century built its fundament on individual human rights and freedoms as one of its main features. Nevertheless, oligarchic repression, traditional and modern (bureaucratic-authoritarian) military regimes and the chronic structural violence in many parts of the region contradict such a positive vision.⁴⁷¹ However, Latin America has rarely argued with the cultural relativist aspect, it sees itself too close to Western civilization and Christian culture to which human rights constitute an important factor.⁴⁷² Therefore, it seemed to be awkward – as, for instance, in the cases of the Chilean and Argentine juntas – to pretend fighting for Western values while suspending human rights in order to save the country from leftist subversion and terrorism.

As seen above, Latin America has known basic human rights of the individual since the independent wars and consequently these rights also found entrance in almost all constitutions of the subcontinent (although the concept of ‘nation’ was an earlier central thought). Nevertheless, Latin America counts to the regions plagued by gross human rights violations, often carried out in a systematical way, while the authorities in power often simultaneously strove for stressing the importance of human rights as a cultural heritage of the region’s

470 Peter R. Baehr – *The Role of Human Rights in Foreign Policy*, Basingstoke, Hampshire/London 1994, p. 140.

471 Stoetzer emphasizes that the evolution of a democratic inter-American system went along with the domestically weak position of representative democracy. Stoetzer, pp. 249/250, 256, 294.

472 Naturally, one has to regard autochthonous indigenous cultures as well, but in this context they are not considered due to the practicability of the author’s search for an explanation model.

European roots. Many governments employed explanations for the temporary suspension of human rights and even made use of the term 'dirty war' to justify own abuses. The main argument was to fight terrorism in an extreme situation with measures not applicable in a *Rechtsstaat* with rule of law but justifiable in circumstances of emergency. The tone prevailed that certain abuses committed by State agents should be accepted if the integrity of the very State was threatened and these abuses were necessary to re-establish the full observance of the rights temporarily suspended or violated.⁴⁷³ In this context, a similarity to the notion of 'foundational time' employed by José Zalaquett becomes evident.⁴⁷⁴ Furthermore, the human rights violations were not categorically denied; it was common practice to euphemistically gloss over them by playing those abuses down as 'individual excesses' that were unavoidable in such a 'dirty war'. In addition, the violence of leftist guerrillas or terrorists often served as a rationalization of State repression. The willingly employed reference to the generally appalling situation (also regarding human rights) before a military government assumed power was presented as a sort of justification for persisting human rights abuses, as was the case in Argentina, for example.

The goal is not even to analyze the reasons for this behavior, but merely to tentatively provide a new expression for an odd practice that actually differs from the 'Doctrine of National Security'. While the latter provides a sort of pathetic 'political concept' of the right wing military complex including economic policies, 'circumstantial relativism' was employed by Somoza and Sandinistas alike and hence merely constitutes a strategy of defense in regard to accusations concerning human rights violations. Thus, circumstantial relativism also contains a conglomerate of a strong State comprehension, a notorious reference to the national sovereignty and nonintervention, but above all to the circumstances, which should explain human rights abuses.

473 Interestingly, also the structuralist current of the theory of dependency provided a somewhat similar explanation model: While the structuralist tendency of the *dependencia* generally wanted Latin American economies to participate in the world market, a temporary isolation was seen as convenient to improve the countries' competitiveness to stand their ground internationally.

474 José Zalaquett – Truth, Justice, and Reconciliation: Lessons for the International Community, in: Cynthia Arnson (ed.) – Comparative Peace Processes in Latin America, Washington, D.C. 1999, pp. 346-347, 350.

The academic research indirectly supports the notion of circumstantial relativism. Usually, the research by and large has distinguished between the 'Western' concept of human rights, favoring the individual rights against the State, and Socialist approaches preferring the socioeconomic rights. Further, a so-called Third World view should be added, which longs for goals such as development, solidarity and ecology.⁴⁷⁵ In addition, mainly governments of the developing regions defend their human rights practice with arguments of the cultural relativism. In this context, it is of interest that many authors apparently have difficulties in deciding where to place Latin America: Is it a (sub) category of the Western concept, or is the classification of a 'Third World' argumentation more suitable?

Famous political scientist Samuel P. Huntington suggests considering Latin America either as a 'sub civilization' within Western civilization or a "...separate civilization closely affiliated with the West and divided as to whether it belongs to the West."⁴⁷⁶ In this context, the Euro centric notion of 'the West' includes Western Europe but not necessarily Latin America, which is geographically located in the West and Europe more in the middle of the globe, all depending of course on the 'right' perspective. In accordance, Wiarda asks whether democracy and human rights are everywhere the same and universal and concludes for Latin America and the Iberian countries the answer is both yes and no. He argues "...human rights and group rights may both be subordinated to the common good or the necessity of maintaining the unity and integrity of the state".⁴⁷⁷ The strong comprehension of State as discussed in the introduction, clearly explains this behavior. Equally, Claudio Grossman, a former distinguished member

475 Similarly, Charles Ritterband categorizes three human rights definitions: 1) "occidental", 2) "oriental" and 3) a 'Third World' concept. See Kühnhardt, p. 284.

476 Samuel P. Huntington – *The Clash of Civilizations and the Remaking of World Order*, New York 1996, p. 46.

477 Wiarda explains the ambiguous answer with the observation that terms like 'pluralism', 'participation', 'rights', 'democracy' or 'representation' have different connotations and meanings in Iberian cultures than in West Europe or North America, commonly summarized as 'Western Christian culture'. Howard J. Wiarda – *Democracy and Human Rights in Latin America: Toward a New Conceptualization*, in: Howard J. Wiarda (Ed.) – *Human Rights and U.S. Human Rights Policy, Theoretical Approaches and Some Perspectives on Latin America*, American Enterprise Institute for Public Policy Research, Washington, D.C. 1982, pp. 30, 49.

and chairman of the IACHR, points out that in the conflict of values between national survival and strict validity of human rights, the theory attempts to save the nation.⁴⁷⁸ In relation to Crahan's conclusions, the Catholic belief and the over-exalted State comprehension also support the phenomenon of a circumstantial relativism because "...[t]he rationale was that such individuals [armed rebels] could not claim any rights as citizens because they had acted against the common good."⁴⁷⁹ Like Wiarda's hesitance to describe the Latin American human rights tradition with the notion 'universal,' other experts of world human rights history have difficulties in appropriately classifying the region following the common categories.⁴⁸⁰

Likewise, international human rights expert Jack Donnelly does not include Latin America in his basic works as 'Non-Western Conceptions of Human Rights.'⁴⁸¹ Accordingly, Kacowicz contrasts Latin America to other regions of the so-called Third World because of its European roots manifested in similar social, political and economic values. Therefore, he considers Latin America as part of the 'Western Christian Culture'.⁴⁸² Similarly, Sikkink sees a long formal tradition of Latin American human rights support and further holds that "...the as-

478 Claudio Grossman – Algunas Consideraciones sobre el Régimen de Situaciones de Excepción bajo la Convención Americana sobre Derechos Humanos, in: Human Rights in the Americas, pp. 121-134, here: p. 121.

479 Margaret E. Crahan – Catholicism and Human Rights: The Case of Latin America, in: Instituto Interamericano de Derechos Humanos (Ed.) – Presente y Futuro de los Derechos Humanos, Ensayos en honor a Fernando Volio Jiménez, San José, Costa Rica 1998, p. 347.

480 See: Howard J. Wiarda – The Democratic Revolution in Latin America. History, Politics, and U.S. Policy, New York 1990, pp. 120/121.

481 Jack Donnelly – Universal Human Rights in Theory and Practice, Ithaca/NY 1989, pp. 49-65; Jack Donnelly – International Human Rights, 2nd edition, Boulder/Oxford 1998; Jack Donnelly – Realism and International Relations, Cambridge (United Kingdom) 2000.

482 Arie M. Kacowicz – Latin America as an International Society, in: International Politics, A Journal of Transnational Issues and Global Problems (The Hague), Vol. 37, Number 2, June 2000, pp. 151, 158. Kacowicz continues: "According to the legalist tradition, new military regimes tried to regularize (i.e. legitimize) their *de facto* regimes in a somewhat formalistic fashion." So, the armed forces tried to sort of 'legalize' their human rights abuses by decreeing states of siege and the suspension of certain rights as well as by the practice to commit these crimes as 'civilians' or by the very employment of the disappearances. See Ernesto Garzón Valdés – Staatsterrorismus und Illegitimität, in: Tobler/Waldmann (Eds.), p. 321.

sumed contradiction between support for sovereignty and nonintervention and the promotion of human rights and democracy is not as severe as often portrayed.”⁴⁸³ Likewise, as the majority of authors, González Amuchastegui mentions cultural relativism merely with respect to Asia and Africa.⁴⁸⁴ In addition, Mols explains that despite of all blurred disputes on ‘occidentalismo’ and ‘tercermundismo’, Latin America is extremely formed by Western culture that it is necessary to take this as a starting point.⁴⁸⁵ Similarly, Gros Espiell speaks of a common legal tradition in the United States and Latin America as far as human rights and its relation to the State are concerned.⁴⁸⁶ However, Miró Quesada states that although human rights in Latin America have been consistently and systematically proclaimed and institutionalized, a “gulf between law and history” exists.⁴⁸⁷ Ermacora defends the same point of view.⁴⁸⁸ Moreover, in this context, Orrego Vicuña correctly specifies that the ‘transculturization process’ during which Latin America took over the Western human rights concept also included the factual human rights practice of France in the Algeria

483 Cited as in Kacowicz, p. 154.

484 Jesús González Amuchastegui – Derechos humanos: Universalidad y Relativismo Cultural, in: Rafael Nieto Navia (Ed.) – La Corte y el Sistema Interamericano de Derechos Humanos, Corte Interamericana de Derechos Humanos, San José/Costa Rica 1994, p. 210.

485 Manfred Mols – Staatsverständnis, Entwicklungsleitbild und politische Kultur in Lateinamerika, in: Josef Thesing (Ed.) – Lateinamerika: Tradition und Modernität, Konrad-Adenauer-Stiftung, Mainz/Germany 1991, p. 50.

486 Héctor Gros Espiell – Le Système interaméricain comme régime régional de protection internationale des droits de l’homme, in: Recueil des Cours de l’Académie de droit international 145 (1975), p. 10.

487 Francisco Miró Quesada – Human rights in Latin America, in: UNESCO (Ed.) – Philosophical foundations of human rights, Paris 1986, pp. 303, 305, 313/314. Miró, an advocate of a ‘philosophy of liberation’, concludes: “However, although from a legal standpoint the situation with regard to human rights is quite positive in Latin America, the same cannot be said of reality.”

488 Felix Ermacora, Menschenrechte in der sich wandelnden Welt, Volume III: Amerika, from: Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse, Vol. 608, Veröffentlichungen für das Studium der Menschenrechte, No. 3, Vienna 1994.

war, the US counterinsurgency as well as German geopolitics,⁴⁸⁹ thus a sort of 'North American-European relativism'.⁴⁹⁰

In summary, in the bibliography the assumption prevails that Latin America has a particular human rights legal tradition but the authors simultaneously emphasize the exceptional discrepancy between sometimes widespread human rights violations and the juridical provisions. Because of this, it still remains difficult to classify Latin America.

Thus, the notion 'circumstantial relativism' shall try to place the human rights argumentation in Latin America, particularly during the 1970s and 1980s, also terminologically between Western individualism and 'Third World' relativism. Consequently, circumstantial relativism is a phenomenon that has evolved specifically in Latin America. The circumstantial relativist argument is a typically Latin American phenomenon because of the legal tradition of the region that explicitly contains and even emphasizes the classic human rights concept, and the contradictory reality, which somehow must be forcefully adapted to the former – by an argumentation employing the circumstantial relativism.⁴⁹¹ Circumstantial relativism means to respect (indi-

489 Francisco Orrega Vicuña – Domestic policies and external influences on the human rights debate in Latin America, in: R. J. Vincent (Ed.) – Foreign policy and human rights, New York/Melbourne 1986, pp. 106/107.

490 Weinstein illustrates the dilemma of how to deal with Latin American human rights tradition and practice: "Some argue that even if those conditions [human rights violations] are true, the U.S. cannot impose its standards on other societies. They take the position that the nations of Latin America do not share our cultural heritage and values and therefore do not have our standards of political and civil rights; that we cannot expect them to, and to impose our standards on them would be a form of cultural imperialism. This argument has merit to the extent that Latin America does not partake of our Anglo-Saxon heritage. But it does share, unlike much of the Third World, a Western and Christian heritage and a long and sometimes forced acquaintanceship with American political and constitutional theory and practice" Martin Weinstein – The United States, The Organization of American States, and Political Repression in the Western Hemisphere, in: Hevener, pp. 215-226, here: p. 218.

491 However, circumstantial relativism could also be regarded as a common phenomenon, even applied in countries of other regions. It should be examined whether the justification of policies such as McCarthy's anti-Communist witch hunt in the US, British security measures concerning the North Ireland conflict, governmental counter-terrorism against members of the assassinating separatists of ETA in Spain, or the actions of the French army during its war against the Algerian independent movement could also be considered as "circumstantial relativism". However – in contrast to these examples – Latin America was the region

vidual) human rights on principle (at least rhetorically) but to admit exceptions that go beyond the limitations included in the respective constitutions or international legal instruments. Circumstantial relativists do accept classic human rights as universal concepts – at least in theory. However, they do not guarantee individual and other human rights under special conditions, mostly if an actual terrorist threat challenges society and State or if such a threat is perceived or often exaggerated. Under these conditions of an actual or perceived or constructed subversive or terrorist threat, human rights do not enjoy universal application because these rights as part of the (occidental) culture, closely linked to the sacrosanct State, must be defended – including the temporary violation of human rights of the State enemies. So, the circumstances temporarily justify not respecting human rights while ‘higher goals’ are reached first.

In fact, there are some provisions, which enable governments to act under emergency rules, like article 27 of the American Convention on Human Rights of 1969. But among the rights that are non-derogable under any circumstances are the rights to life, to personal freedom and personal integrity, the prohibition of torture, the right to due process – those rights precisely, which have witnessed the most frequent violations during the 1970s and 1980s. So, the argumentation of governments to fight a ‘dirty war’ against subversion or terrorism should suggest that in this ugly struggle against State enemies, the government also had to carry out some of the terrorists’ methods in order to win the final battle. Nevertheless, unlike cultural relativists, these regimes explicitly referred to their real commitment to human rights and further hinted to the atrocities committed by the subversive forces. Accordingly, the main element of circumstantial relativism is to pay lip service to human rights while violating these at least temporarily. In other words: the argumentation that defends a temporary suspension of the universality of human rights (valid at all times, everywhere, for everyone) constitutes the main feature of circumstantial relativism. In simple terms, circumstantial relativism toys with the idiom that the end justifies the means: in order to reach a goal, I have to

where this relativism often served as a general argumentation to justify even gross and systematic human rights violations that aimed to maintain unjust political and economic systems, which habitually violated the socioeconomic rights of the population’s majority.

disregard the goal's principles until I succeed. There are two main methods to act according to the circumstantial relativism: 1) the attempted 'legalization' of human rights abuses: the government decrees special laws that (temporarily) suspend basic rights but further also contradict with the national constitutions; and 2) 'camouflage tactics' to cover violations: the application of repressive measures of clandestine character such as forced disappearances or actions carried out by government agents dressed in civilian clothes to cover up State terrorist activities. In contrast to ambitions of Latin American despots to cloak their brutal practices pseudo-legally or by the diversion of the perpetrators, other dictatorships 'just did it'. Consequently, sometimes a relativity of the universality of human rights takes place in Latin America, but it does not possess the character of an identity-creating fundamental rejection of Western models (democracy, human rights, parliamentarianism), though the differences between the claim and the actuality of constitutional and political reality are frequently astonishing. Usually, repressive governments used to refer to the 'reality' in their countries, which did not broadly permit the full enjoyment of human rights at all times.

The divergence between the constitutional mentioning of human rights and the inclusion of human rights as part of the national independence, versus the real disrespect or frank violation of the aforementioned rights on the other hand, are explained with the Iberian heritage of not strictly enforcing the written law. The difference between colonial law and actual handling in Spanish America serves as a simple explanation since it does not address whether the concerned governments actually believed in human rights or not.

One of the problems for the human rights reality in Latin America is that, unlike in Western Europe and North America, in most of the Latin American countries there were no enforcement organs or even constitutional mechanisms to actually impose human rights. So, the questions were: To whom to turn if abuses occur? To the police that probably are engaged in the violations themselves? To the questionable judiciary? To the parliament? Since the emergence of human rights groups and through the increasing (international) public pressure on human rights violations, the domestic lack of corresponding organs was compensated. Before the 1973 coup in Chile, abusing governments were not broadly forced to explain their actions, which obviously contradicted with their vow to protect human rights. After the

Chilean *Putsch*, the international media and public forced governments to defend their violent actions carried out to 'defend Christian values and culture.' Only since 1973 has a real circumstantial relativism developed and in some cases, become a sophisticated argumentation pattern.

If human rights belong to the fundamental basis of a democratic system, the frequency of circumstantial relativist actions could indicate the level of rule of law security. From the perspective of international relations realism, no government could ever exclude any circumstantial relativism on principle because it would decisively limit its scope for action. Nevertheless, during the period of this inquiry, in some Latin American countries circumstantial relativism converted into a State doctrine to categorically defend a questionable human rights practice.

In general, this approach is certainly not a new one, but the term 'circumstantial relativism' attributes a new quality to it.

As already mentioned, by employing it as an argumentative remedy, the protagonists of this relativism willingly described a situation as (internal) 'war' or frequently as a 'dirty war' through which they hoped to gain understanding for the employment of violent measures: "Una guerra es algo cruel y se violan derechos humanos."⁴⁹² This quotation made by former Argentine Foreign Minister Pastor was a comment the author heard several times during his interviews with former representatives of governments accused of human rights abuses. In the following, some examples for argumentations referring to the circumstantial relativism illustrate the meaning.

At the OAS General Assemblies as well as in replies to IACHR charges regarding human rights violations, diplomats from accused Latin American Member States came up with a series of arguments that fit into the circumstantial relativism approach:

- 1) The main aspect brought up was the reference to the situation before a government took power – mostly by a military coup. The preceding situation was commonly depicted as one of general vio-

492 "A war is something cruel and human rights are violated." Carlos Washington Pastor – Chile: *La guerra o la paz 1978-1981*, in: Silvia Ruth Jalabe (comp.) – *La política exterior argentina y sus protagonistas 1880-1995*, Consejo Argentino de Relaciones Internacionales, Buenos Aires 1996, p. 291.

lence, disorder and abuses mainly attributed to the foregoing government in charge. With the illustration of the abuses of its predecessors, many governments justified their very existence (Argentina, Chile, El Salvador, Nicaragua etc.).

- 2) Additionally, many regimes that violated human rights tried to justify its practice by pointing to the prevailing terrorism mostly attributed to Marxist foreign intervention. The link between terrorism and human rights enjoyed high popularity among repressive regimes since it promised to create at least partly sympathy among the population with its own government's 'unorthodox' measures. In this context, the term 'dirty war' emerged. It described a virtual 'war' between leftist terrorists and the authorities that kept fighting for order. By and large, besides some few cases there was hardly an insurgent movement that actually threatened the State's existence.
- 3) The reference to a country's traditional role as human rights defender was tactlessly employed by repressive governments in several occasions – however, exclusively Member States that actually had this sort of human rights tradition, like Chile or Uruguay, used to do so.

In the very beginning of the inter-American human rights system, the president of the OAS Council pronounced at the approval of the Commission's Statute: "But to apply [the American Declaration on the Rights and Duties of Man] in its exaggerated extension entirely, would give space for an unjust series of charges that could not resist the most solidly protected government, more tightly surrounded by the opinion of its people."⁴⁹³ In this context, the IACHR's first chairman and former president of Venezuela, Rómulo Gallegos, deplored that in various situations the words of law did not correspond with the practices.⁴⁹⁴

493 "Pero aplicarlo [Declaration] en toda su exagerada extensión daría lugar a una injusta serie de reclamos que no podría resistir el Gobierno más sólidamente protegido, más estrechamente rodeado por la opinión de su pueblo." OEA/Ser.G/II C-a-388 (Protocolar), 13 octubre 1960, Acta de la Sesión Protocolar celebrada el 13 de octubre de 1960: En honor de los miembros de la Comisión Interamericana de Derechos Humanos, p. 7.

494 *Ibid.*, p. 14. Gallegos stated "...a la letra de las leyes no corresponden las prácticas imperantes."

Former IACHR member Farer reports on his personal experience and concludes that the torturers did not admit their practices but abstractly defended human rights violations as isolated ‘abuses’ that commonly occur in a ‘dirty war’: “They spoke, in other words, with the reticence and evasion of people who, though they feel justified, know they are operating outside the formal and moral law of that Western Christian civilization in the name of which they conduct their wars of extermination.”⁴⁹⁵ “They did not doubt their delinquency; but in their hearts and among their own kind, they successfully pleaded extenuating circumstances.”⁴⁹⁶

In 1975, the Chilean government rejected the IACHR Report with the argument that the previous government of leftist president Allende had destroyed the living together in Chile and thus the Chilean people carried out the “legitimate right of rebellion”. In the view of the Chilean authorities, the appropriate view of the IACHR should have been to admit the people’s legitimacy for the present government and that the “abnormality” and “emergence” of the country would justify the restriction of certain basic guarantees or rights.⁴⁹⁷ In the same document, the Chilean government again referred to the “humanist-Christian concept of man and society”.⁴⁹⁸ Similarly, the rebuttal against the Commission’s accusations issued by the Uruguayan government criticized the IACHR’s omission to report on foregoing human rights violations that occurred before 1973.⁴⁹⁹

In 1977, the *Washington Post* made a comment on the General Assembly: “The militarists came to Grenada armed with evidence of Communist conspiracies and terrorism. Apparently intending to take

495 Tom J. Farer – *The Grand Strategy*, p. 99. See pp. 100-108.

496 *Ibid.*, p. 99.

497 Observations by the Government of Chile on the “Report on the Status of human rights in Chile”, prepared by the Inter-American Commission on Human Rights, OEA/Ser.P, AG/doc. 500/75 add./, 25 February 1975, Original: Spanish, General Assembly, Fifth Regular Session, May 8, 1975, pp. 3-6, 10.

498 Further, the chairman of the Commission on Constitutional Reforms that elaborated a new Chilean constitution, promised to include not only a special emphasis on human rights but also social rights, the traditional division of the executive, juridical and legislative branches into the country’s new charter. *Ibid.*, pp. 35-38.

499 República Oriental del Uruguay, Ministerio de Relaciones Exteriores – Los Derechos Humanos en Uruguay, respuesta del Gobierno al Informe de la Comisión Interamericana de Derechos Humanos, de fecha 24 de Mayo de 1977, Montevideo, Setiembre de 1977, p. 5.

their lumps on some human rights violations, they demanded OAS recognition of their point of view – that some repressions are necessary to combat terrorism.”⁵⁰⁰ At that General Assembly in Grenada, the delegation of El Salvador proposed to treat human rights and terrorism topics as one agenda point.⁵⁰¹ With a reference to an Argentine⁵⁰² proposal to request the IACHR to dialogue with governments about human rights violations committed by terrorists, the Salvadoran representative, González Dubón, further stressed: “Unfortunately, those who did not accompany this project do not want to understand the problem of terrorism that shakes some of the American countries like ours.”⁵⁰³ Similarly, the Chilean delegate recommended that the IACHR stay for a while in the country under scrutiny in order to attain a sense of the ‘reality’ of the actual situation. Likewise, Argentina’s delegate criticized that terrorism was the big absentee of the General Assembly resolutions.⁵⁰⁴

At the General Assembly in 1978 the Paraguayan delegate, Luis María Argaña, stated that his country naturally would respect human rights. Furthermore, he said that through the condemnation of terrorism, human rights were indirectly protected.⁵⁰⁵ The Uruguayan repre-

500 The *Washington Post* also quoted Chilean diplomat Diez: “Terrorism and human rights are intimately related.” *Washington Post*, June 23, 1977, p. A20.

501 OEA/Ser.P/VII-0.2, 30 diciembre 1977, Vol. II, Primera Parte, Séptimo Período Ordinario de Sesiones, St. George’s, Grenada, del 14 al 22 de junio de 1977, Primera Comisión, p. 144.

502 The Argentine representative, Juan Carlos Arlia, spoke of the rights and duties of States concerning economic rights and presented his vision of human rights: “La definición de violación de los derechos humanos que reconoce como origen o causante exclusivo a los gobiernos, pertenece a una concepción filosófica liberal obsoleta, de quien detenta el poder en una sociedad que pertenece al pasado, que no se ajuste a la realidad en ninguno de nuestros países”. (“The definition of human rights violations that recognizes governments as exclusive origin or cause, belongs to an obsolete liberal philosophical conception...”) OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, pp. 158, 159.

503 “Lamentablemente, quienes no acompañaron dicho proyecto no quieren comprender el problema del terrorismo que sacuden a algunos países americanos como el nuestro.” OEA/Ser.P/VII-0.2, 30 diciembre 1977, Vol. II, Primera Parte, Séptimo Período Ordinario de Sesiones, St. George’s, Grenada, del 14 al 22 de junio de 1977, Primera Comisión, p. 145.

504 *Ibid.*, pp. 155, 162.

505 OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Volumen II, Parte II, Octavo Período Ordinario de Sesiones, Washington, D.C., del 21 de junio al 1° de julio de 1978, Primera Comisión, pp. 90, 91.

sentative to the OAS, Carlos Giambruno, stressed his country's human rights tradition as well.⁵⁰⁶ Further, Giambruno underlined that it was necessary to consider the human rights situation in a particular Member State within that country.⁵⁰⁷ At the plenary session of the 1978 General Assembly, Uruguay's representative, Alejandro Rovira, reiterated that Uruguay had always respected human rights and always would do so in the future because of its tradition.⁵⁰⁸ This argument was repeated by the Uruguayan delegation in 1979.⁵⁰⁹

In 1982, IACHR member Monroy Cabra rejected criticisms by the Nicaraguan Sandinistas and referred extensively to the situation in that country. In reply, the Nicaraguan diplomat Herdocia admitted that there had been executions but proclaimed in a very emotional presentation that the immediate period after Somoza's overthrow witnessed special circumstances but that the situation now was 'much better'.⁵¹⁰ The argument employed by the Nicaraguan representative appears similar to the strategies carried out by several right-wing dictatorships such as those in Chile or Argentina: to understand the present human rights situation it is necessary to take into account the atrocities committed under the foregoing government.

At the 1989 Assembly, the OAS representative of El Salvador, Roberto Mejía Trabanino, held that guerrilla violence and terrorist acts by the FMLN forces would impede a full observance of human rights and further considered the IACHR report somehow "partial about the authentic national reality" and that the report did not deal with the victims affected by the FMLN acts nor the damage of the economic infrastructure.⁵¹¹ However, some rejecting reactions to such circumstan-

506 Ibid., p. 71.

507 Ibid., p. 142.

508 Ibid., p. 251.

509 OEA/Ser.P/IX.0.2, 3 noviembre 1980, Volumen II, Parte I, Noveno Período Ordinario de Sesiones, La Paz, Bolivia, del 22 al 31 de octubre de 1979, Sesiones Plenarias, p. 317.

510 OEA/Ser.P/XII.0.2, 29 julio 1983, Volumen II, Parte II; Duodécimo Período Ordinario de Sesiones, Washington, D.C., Del 15 al 21 de noviembre de 1982, Actas y Documentos, Volumen II, Segunda Parte, Actas de las Comisiones (Primera Comisión), pp. 96-102, 103-108.

511 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, p. 163, pp. 163-165 (Jesuit murder). Also OAS ambassador Mauricio Granillo Barrera tried to accuse the FMLN of the Jesuits' assassination.

tial relativist arguments also occurred at the OAS gatherings. A few examples will complete this illustration: In 1977, Venezuela opposed Chile's proposal to adopt a resolution that linked human rights and terrorism and to discuss both topics combined.⁵¹² At the same General Assembly in 1977, the US delegation pushed a resolution that declared "there are no circumstances which justify torture, summary executions or prolonged detention without trial contrary to law". Likewise, in 1979 Pope John Paul II spoke before the OAS on October 6, 1979, and underlined that no circumstances would permit an attack on the inviolable dignity of the human person and the genuine rights that protect this dignity.⁵¹³

Circumstantial relativism plays a vital role regarding actual foreign policy and human rights. With reference to everyday decisions as well as to the innate complexity and the general interdependence between foreign policies in general and between domestic and foreign relations, in the majority of cases decision-makers employed the arguments of the circumstantial relativism. Actually, circumstantial relativism could be regarded as the natural complementary element to bi- or multilateral foreign policy realism.

Diplomatically, OAS representatives tried to stress circumstances that led to declare a sort of 'internal war' situation, thereby justifying temporary violations of rights. Further, OAS diplomats used to link terrorism and human rights as a single topic because they were eager to discuss both items together in order to distract from abuses and to justify the governmental employment of violence. Here it is hoped that the contribution of this new expression serves as an inspiring cause for thought by supplementing the previously made classification of US and Latin American in statist, realist and relativist approaches. US American *Realpolitik* has served as the necessary foreign policy company that complementarily escorts a domestic circumstantial rela-

See OEA/Ser.G, CP/ACTA 798/89, 30 noviembre 1989, Acta de la session extraordinaria celebrada el 30 de noviembre de 1989, p. 8. See: Pedro Armada/Martha Doggett – Dead foretold. The Jesuit Murders in El Salvador, 1993; Klaas Dykmann – El Salvador: Die Menschenrechte im Visier, Hamburg 1999, pp. 71-75.

512 OEA/Ser.P/VII-0.2, 30 diciembre 1977, Vol. II, Primera Parte, Séptimo Período Ordinario de Sesiones, St. George's, Grenada, del 14 al 22 de junio de 1977, Primera Comisión, pp. 330, 333, 334.

513 Tom J. Farer – The Grand Strategy, p. 84.

tivism of another repressive government. In concrete terms, the force of circumstance of realist US foreign policy somehow justifies an abusing government, which has to defend itself against subversion. Basically, it seems to be the same behavior patterns as in the realist-statist model explained before, but with the new term of a circumstantial relativism may be easier to classify typical lines of argumentation.

Summarizing this chapter, the Inter-American Commission on Human Rights certainly had its internal shortcomings and institutional and political difficulties within the OAS bureaucracy. Nevertheless, the Commission was able to turn an exclusively declaratory or promotional institution into a highly controversial ‘conscience of the hemisphere’⁵¹⁴, as some observers comment. This evolution was an internal process to which mainly the Commissioners and the Secretariat contributed. However, somewhat ironically, an odd coincidence eventually strengthened the Commission in the mid-seventies. While military governments dominated large parts of the hemisphere and thereby could obstruct OAS decisions on human rights, US president Carter highlighted this topic. So, the IACHR had the reason for its work with the numerous dictatorships and the financial and political backing through US support. In contrast to the mainly inglorious function correctly attributed to US policy in regards to human rights violations in Latin America, the US administrations at least partly endeavored to strengthen the inter-American human rights system. In general, the role of the United States was certainly helpful and had a promoting influence on the IACHR’s emergence, but it was not the only reason for the Commission’s rise in the 1970s as it was not the sole cause for its decline during the 1980s. This will be shown in the chapters III and IV.

Accordingly, in the following chapter, the development of the Inter-American Commission on Human Rights into the most controversial and maybe most influential OAS organ will be discussed.

514 The Ecuadorian representative called the Commission “la portavoz de la conciencia de América que ha proclamado a los cuatro vientos el derecho de los hombres a la libertad, a la seguridad individual y a la dignidad humana.” Consejo Permanente de la Organización de los Estados Americanos, Acta de la Sesión Protocolar celebrada el 27 de septiembre de 1984, OEA/Ser. G. CP/ACTA 584/84, 27 Septiembre 1984, p. 2.

III. The OAS Human Rights Policy in the 1970s: Between Dictatorships, Violence, and Hemisphere Policies

From a simplified perspective, there were two major tendencies in the hemisphere regarding human rights politics during the 1970s: First, since 1973 many dictatorships emerged¹ whose human rights violations expanded the issue beyond the region. Second, Jimmy Carter, elected as US president in late 1976, elevated human rights to the foreign policy status of “the soul of US foreign affairs.” To explore these two tendencies further, it is necessary to first take the global political situation into account.²

The tendency of many military leaders to seize power through violence could also be interpreted as a result of the international economic crisis in the beginning of the seventies. In 1973, three events ushered in a critical phase in North-South relations: the Yom-Kippur war launched by Egypt and Syria against Israel, the subsequent embargo of Arab oil-exporting States in order to diminish European, Japanese and US support for Israel, and the decision of the ensemble of Third World oil exporters to raise the price of oil fourfold. While the US strengthened their pressure on OPEC members to reduce the price of oil, developing countries were for the first time major actors in an international crisis. In spite of this shift, the US administrations of Richard Nixon and Gerald Ford sought to maintain the status quo of

1 Actually, the emergence of military dictatorships began with the Brazilian military coup in 1964. However, the Brazilian military rule was not as cruel as those regimes led by the armed forces during the 1970s, therefore the author tends to view the Chilean *golpe militar* – though preceded by the Uruguayan coup – as the beginning of dictatorial rule in South America.

2 This chapter covers the period between 1973 and 1980 and preponderantly deals with the particular situation in Chile and Argentina, but also mentions the cases of Nicaragua, El Salvador and Panama. It will be of interest to mention the Chilean case, but not to an extent that the material available would allow. Unlike the Chilean case, human rights abuses in Argentina and its impact on the inter-American system have not been a subject of such prolific investigation. The Argentine human rights record and the OAS system have not been analyzed to a satisfactory extent and thus might be at least as interesting as the Chilean case.

international economic relations.³ Unlike the tense North-East relations, the importance of the East-West confrontation had diminished in the late 1960s and early 1970s, also because France and China developed autonomous foreign policies.

The oil price shock in 1973, which unleashed an international economic crisis, contributed to the deterioration of the socioeconomic situation in Latin America. In the context of these circumstances, the increasing guerrilla activity in the region, which had notably intensified since the Cuban Revolution in 1959, also played a role. Guerrilla movements emerged that were inspired by the nationalistic and later Marxist-Leninist revolutionary rhetoric of the Cubans. These guerrillas became a virtual and at times acute threat to the existing order in Latin American societies. The highly unfair distribution of property and land in many countries seemed to give those movements a legitimate cause.

The relations between the United States and Latin American nations were particularly difficult in the beginning of the 1970s. Latin America had established ties within UNCTAD, GATT and the International Monetary Fund with “new Afro-Asian allies” in order to create a Third World counterweight to the industrialized nations.⁴ On the other hand, the US expressed its unhappiness with the role of Venezuela and Ecuador in OPEC⁵ and excluded both countries through the US Trade Act from the reduction in tariffs through the Generalized System of Preferences. Latin American resentments against the US Trade Act of 1974 directed against the OPEC members Venezuela and Ecuador, and the discovery of clandestine CIA activities in the region, exacerbated traditional anti-American sentiment in each country.⁶ In

3 Robert A. Mortimer – The Third World Coalition in International Politics, Second, updated edition, in: *Foreign Relations of the Third World*, No. 2, Boulder/London 1984, pp. 43-45, 162, 132/133.

4 Tom J. Farer – The United States and the Inter-American System: Are There Functions for the Forms? *The American Society of International Law, Studies in Transnational Legal Policy* No. 17, Washington, D.C. 1978, p. 44.

5 Also Mexico supported OPEC's decisions although it did criticize some of the organization's decisions as well. The latter might be explained by Mexico's attempt not to offend its major trade partner, the US. *Washington Post*, May 15, 1975, p. A4.

6 The Inter-American Economic and Social Council found that the US Trade Act contradicted Kissinger's ‘New Dialogue’. *Inter-American Economic and Social Council – X Annual Meeting at CIES at Ministerial Level*, 10-15 March 1975,

addition, the Peruvian leftist military government under Juan Velasco Alvarado that advocated nationalism and anti-imperialism, called for a radical reorganization of the inter-American system, including a Latin American economic front.⁷ A further reason for US concern was the Latin American support for the 1975 UN General Assembly resolution, which declared Zionism as a form of racism. Despite of these obstacles – as former US Secretary of State, Henry Kissinger holds – official contacts between the United States and Latin American nations were friendlier and more substantive than with other developing countries, which he describes as an anomaly. However, Kissinger considered Latin American countries – besides their rhetoric – not as major players among the nonaligned nations⁸ and generally speaking, not important in global politics.⁹ Kissinger – after having served as National Security Adviser to US president Richard Nixon – became Secretary of State under the Ford administration in 1974 and announced a ‘New Dialogue’ with Latin America.¹⁰ Although in many ways Kissinger attempted to rescue the Pan American idea, which he considered moribund at that time¹¹, this new approach did not improve the difficult US-Latin American relations.

Washington, D.C., The United States Foreign Trade Act of 1974: Aspects of Interest to Latin America, OEA/Ser.H/X.24, CIES/3043, 28 February 1975, Original: Spanish, pp. 4/5.

- 7 Stephen M. Gorman – Peruvian Foreign Policy Since 1975: External Political and Economic Initiatives, in: Elizabeth G. Ferris/Jennie K. Lincoln (Eds.) – Latin American Foreign Policies, Global and Regional Dimensions, Boulder 1981, pp. 116, 117.
- 8 Henry Kissinger, *Years of Renewal*, The Concluding Volume of His Memoirs, New York 1999, pp. 732/733.
- 9 See: Michael J. Francis – United States Policy toward Latin America during the Kissinger Years, in: John D. Martz (Ed.) – United States Policy in Latin America. A Quarter Century of Crisis and Challenge, 1961-1986, Lincoln/London 1988, pp. 30/31.
- 10 Kissinger demonstrated his new interest in a ‘New Dialogue’ by attending the 1975 OAS General Assembly in Washington, D.C. His first step to improve the troubled relations between Latin America and the White House was a breakfast for the Chilean delegation discussing the IACHR Report on that country. *Washington Post*, May 9, 1975, p. A26. See as well: *Washington Post*, February 17, 1976, p. A12.
- 11 John Edwin Fagg – Pan Americanism, Malabar, Florida 1982, p. 115.

Moreover, by 1972/73 the US Congress had begun to enforce human rights in US foreign policy.¹² In 1974, the so-called Fraser amendment to the Foreign Assistance Act, Section 502B, was adopted. This amendment, though not yet binding, tied US security aid to the corresponding human rights record of the receiving government.¹³ However, Amendment 502B contained loopholes that permitted aid in spite of a bad human rights performance “in extraordinary circumstances” or when national interests of the United States were affected. Despite Kissinger’s opposition, Congress and President Ford finally reached a compromise, which was signed into effect on June 30, 1976.¹⁴ This represented an “institutionalization of human rights in US foreign policy.” Characteristically, the first summary report of the Subcommittee on International Organizations of the House of Representatives had the title: “Human Rights in the World Community: A Call for U.S. Leadership.”¹⁵

On the other hand, in 1975 several events initiated a period of decline for the OAS as an inter-American forum and as an instrument of Latin American unity.¹⁶ In 1975, Latin American dissatisfaction with its northern neighbor ushered in the creation of SELA (*Sistema Económico Latinoamericano*), an exclusively Latin American economic organization that included Cuba. SELA deprived the OAS Economic and Social Commission of its function to serve as discussion forum for inter-American economic and trade issues. The Latin American Economic System, as in its English translation, followed a

12 The Jackson Amendment of 1972 and the Fraser Hearings in 1973 initiated the human rights debate, followed by the Harkin Amendment in 1975. Friedbert Pflüger – Die Menschenrechtspolitik der USA. Amerikanische Außenpolitik zwischen Idealismus und Realismus 1972-1982, Munich/Vienna 1983, pp. 69-81.

13 The International Security Assistance and Arms Export Control Act (1976), in: Laquer/Rubin (Eds.), pp. 341-343.

14 Iain Guest – Behind the Disappearances. Argentina’s Dirty War Against Human Rights and the United Nations, Philadelphia 1990, pp. 151-153. See Pflüger, pp. 65-81.

15 Christoph Müller – Die Menschenrechte als außenpolitisches Ziel. Das Beispiel der amerikanischen Politik der Jahre 1973-1980, from the series: Völkerrecht und Außenpolitik, Vol. 37, also Diss., 1984, Baden-Baden/Germany 1986, pp. 14, 33, 34.

16 In 1975, a Meeting of Consultation freed the OAS Member States from the trade sanctions imposed on Cuba, while the US involvement in the coup in Chile as well as the 1974 Trade Act and the US-Ecuadorian tuna wars provoked protests in Latin America. Wilson/Dent, p. 32.

tendency of nationalism and regionalism, which had been promoted mainly by the import substitution and regionalism models of the then influential UN Economic Commission on Latin America, CEPAL. That Commission – under its most efficacious executive director Raúl Prébisch – had elaborated a theory of periphery that was the basis for the development strategy known as CEPALISMO. Prébisch's theory served also as one of the fundamentals of the structuralist version of the mostly popular theory of dependence, better known under its Spanish term, *dependencia*. Though the theory of *dependencia* was more influential in the academic and social philosophic areas, than in actual economic policies of States, its impact on the perception of US-Latin American relations was substantial.¹⁷ In addition to SELA, a Latin American Free Trade Association (ALALC) was founded, which sought also to develop Latin American nations through a strategy of regional protectionism combined with import substitution and interregional trade.¹⁸ In general, the 1970s witnessed a pronounced Latin American consciousness and the region's strong involvement in the so-called *tercermundismo* movement, striving for economic and political independence from the industrialized countries in general and from the predominant United States in particular.¹⁹

The tensions between Latin America and the United States also affected the Organization of American States. Between 1970 and 1973, many Member States expressed their dissatisfaction with the organization, which mostly dealt with US-Latin American differences and whose organs preponderantly discussed economic matters. In 1970, Nixon's Security Adviser Henry Kissinger requested in a National Security Council memorandum to "...strengthen the Organization of American States and other instrumentalities of the inter-American sys-

17 Stuby concludes that the endeavors of the nonalignment and Third World movements as well as the *dependencia* resulted in the formulation of the third generation of human rights, the so-called solidarity rights. Stuby, p. 33.

18 ALALC was accompanied by several subregional trade zones like the Andean Pact, the Caribbean Common Market or the Central American Common Market.

19 Alberto van Klaveren – Die internationalen Beziehungen Lateinamerikas in den achtziger Jahren, in: Dieter Nohlen/Mario Fernández/Alberto van Klaveren (Eds.) – Demokratie und Außenpolitik in Lateinamerika, Opladen/Germany 1991, p. 29. Booth, pp. 33/34. Stefan Hertrampf – Panamerikanismus, Interamerikanisches System und die Organisation Amerikanischer Staaten (OAS), from the series: Dokumente und Materialien No. 21, March 1994, Johannes Gutenberg Universität, Institute for Political Science, pp. 21, 22. Brock, p. 228.

tem in ways which would be consistent with our overall interests and objectives...”²⁰ However, the General Assembly in 1972 clearly demonstrated the aforementioned problems when sharp differences between the US and several Latin American members surfaced.²¹ In 1973, William D. Rogers, who later became Assistant Secretary of State in the Ford administration, called for a US pullout from the OAS. Rogers – who later modified his opinion when he became member of the Ford administration – criticized US paternalism and lamented the tendency of Latin American States to not discuss internal socioeconomic matters in a regional forum due to a growing sense of nationalism. Such a withdrawal of the US from the OAS probably would have terminated the organization’s existence because of the strong financial contribution the US made, which at that time made up two thirds of the budget.²² Interestingly, it was also Rogers who later gave an emphatic speech on the common value of human rights in the inter-American system and further appealed to strengthen the Inter-American Commission on Human Rights.²³ The Latin American desire for political and economic independence from the US resulted in different proposals: Some Member States wished to withdraw from the OAS, others favored to abolish the organization completely,²⁴ and

20 National Security Council, National Security Study Memorandum 108, Henry A. Kissinger, Subject: Review of U.S. Policy Toward Latin America, Secret, Washington, D.C., December 10, 1970 (NSA files).

21 Gabriel Valdés S. – Requiem para la O.E.A., in: *Criterio*, Buenos Aires, Año XLVI, 13 de Setiembre de 1973, No. 1675, p. 473; *Washington Post*, April 16, 1972, p. A25. In 1972, even OAS Secretary General Galo Plaza indirectly accused the US when he referred to “political restrictions” the developed countries would impose on developing countries. *Washington Post*, April 12, 1972, p. A10.

22 William P. Rogers – Adios, OAS: A U.S. Pullout Would Help, in: *Washington Post*, April 8, 1973, p. C3. However, Rogers did not proclaim a full US withdrawal from inter-American commitments, more a notable reduction of the US role. See also: Editorial – Why Not Withdraw From the OAS?, *Washington Post*, April 8, 1973, p. C6.

23 OEA/Ser.G CP/INF.771, 5 diciembre 1975, Original: inglés: Discurso del Honorable William D. Rogers, Subsecretario de Estado para Asuntos Interamericanos, preparado para pronunciarlo ante la Sociedad Panamericana, Boston, 4 de noviembre de 1975, Topic: Human Rights and Foreign Policy in Latin America.

24 In 1973, Valdés wrote that the inter-American system would only serve to aggravate the problems, never to resolve them. Gabriel Valdés S. – Requiem para la O.E.A., in: *Criterio*, Buenos Aires, Año XLVI, 13 de Setiembre de 1973, No. 1675, p. 475.

finally, there were voices that called for a withdrawal of the US from the organization to turn it into a Latin American institution.²⁵ Proposals were made by some Latin American governments to radically change the organization's structure because it was perceived as ineffective. In general, Latin American proposals sought to decrease the dominant US influence in the OAS. For instance, there were members who favored to move the OAS headquarters from Washington to a Latin American capital – a proposition with symbolic importance that would have reduced the US impact notably.²⁶ Besides grievances on US-Latin American economic and trade relations, several Latin American governments criticized Washington's stand on hemispheric military cooperation and its policy toward Cuba, which was sensed as pertinacious and anachronistic.²⁷ In the early 1970s, the Latin American Member States mainly consisted of dictatorships or weak governments. Naturally, this also affected the organization's stand on human rights.

In the early 1970s, the OAS adopted several resolutions, which condemned terrorism. Generally speaking, besides economic matters, political terrorism was one of the major topics at the OAS in the beginning of the 1970s. In many ways, political terror against the State was an earlier substantial issue in the OAS than human rights obligations of governments.²⁸ Seemingly, this demonstrated that the OAS

25 The author suggests that if the US had withdrawn or been expelled from the OAS or if the Latin American States had decided to create a Latin American organization instead, the Organization of American States probably would not have survived the late 1970s or would have been turned into an organ run exclusively by authoritarian regimes.

26 Nevertheless, such proposal also found support in the US. *Washington Post*, June 15, 1977, p. A12.

27 *Washington Post*, January 4, 1972, p. A4; April 12, 1972, p. A10; June 1, 1972, p. A6; April 5, 1973, p. A2; April 6, 1973, p. A4; July 20, 1973, p. A16; September 8, 1973, p. B6. As a reaction to the sympathetic stand for a reintegration Cuba into the inter-American system among OAS Member States, in November 1974, a bomb, apparently deposited by some anti-Castro militants, damaged the OAS headquarter building in Washington. *Washington Post*, November 10, 1974, p. B7.

28 See, for instance, *Washington Post*, February 3, 1971, p. A16; OEA/Documentos Oficiales/Ser.G. CP/Doc.10/70, 13 abril de 1970, Original: español: Nota UP-68 (6005) de 13 de abril de 1970 del Embajador Representante de la Argentina en la cual propone que el Consejo Permanente estudie una acción condenatoria del terrorismo y secuestro de personas, y de las organizaciones que utilizan dichos me-

was an intergovernmental organ, which mainly sought to maintain the status quo by a statist policy.²⁹

In 1970, the Inter-American Commission on Human Rights was elevated to a main organ of the OAS by the entry-into-force of the Protocol of Buenos Aires. In 1969, there had already been a significant step towards human rights in the inter-American system with the holding of the Special Conference on Human Rights in San José, Costa Rica. At this historical conference, the OAS Member States approved the American Convention on Human Rights.

The new main political bodies of the organization, above all the Permanent Council and the General Assembly, continued to treat human rights issues as a field, which was seen more as a protocol than as a political matter. The General Assembly used to comment on the Annual Reports of the IACHR with a simple standardized formula, with which it merely and unspecifically thanked the Commission for its valuable work. With this *gentlemen's agreement*, the Member States tried to avoid blaming one single country, because generally almost every State could be criticized. Besides the vague resolutions concerning human rights issues, even debates on sensitive human rights topics were avoided.³⁰ This situation definitively changed with the IACHR reports on the situation of human rights in Chile.

dios, Washington, D.C. 13 de abril de 1970; OEA/Documentos Oficiales/Ser.G. CP/ACTA 18/70, 19 agosto 1970, Confidential, Acta de la Sesión Extraordinaria de carácter privado celebrada el 19 de agosto de 1970, Aprobada en la sesión del 21 de octubre de 1970: Exposición del Representante del Uruguay referente a los recientes secuestros ocurridos en ese país, p. 2; OEA/Documentos Oficiales/Ser. G CP/ACTA 30/70, 9 diciembre 1970: Acta de la sesión extraordinaria celebrada el 9 de diciembre de 1970, aprobada en la sesión del 31 de marzo de 1971: 1) Informe de la Comisión General acerca de los documentos preparados por el Comité Jurídico Interamericano sobre los actos de terrorismo y en particular el secuestro, la extorsión y otros atentados contra las personas.

29 See José Luis Ramírez León – La OEA, los países latinoamericanos y la democracia en el hemisferio, in: Síntesis, No. 21, Julio-Diciembre 1993: El Apoyo Internacional a la Democracia en América Latina, Madrid 1994, pp. 196/197.

30 Or, as the Washington Post put it: “In the highly juridical, diplomatically sensitive OAS style, a controversial issue is easily kept off the agenda.” Washington Post, May 18, 1975, p. A2.

III. 1. The Human Rights Issue Enters the OAS Agenda: The Chilean Case (1973-1976)³¹

As LeBlanc argues, the relations between the IACHR and Chilean governments until the late 1970s can be divided into at least two periods. The period prior to September 1973 was marked by few complaints against the Christian Democrat government led by Eduardo Frei until 1970. The government of the Socialist Salvador Allende Gossens' *Unidad Popular* (1970-1973) though, led to more petitions, but those were not comparable with the amount of complaints received by the Commission after September 1973.³² This chapter deals with the visits and reports of the IACHR as well as with the General Assemblies during the years 1973 until 1976.

The Commission member Jiménez de Aréchaga apparently had some sympathy for Allende according to remarks of the Commissioner Sandifer. Also, the Commission met in Chile in 1972, after Sandifer described Chile as a place of freedom and dignity for all men.³³ There may have been some sympathy for the Allende government within the Commission, which would explain why it chose to address human rights violations of the military regime at a later date. The government of Allende's *Unidad Popular*, elected in 1970, tried to implement poorly coordinated economic and social policies. Further, the United States had already decided in 1970 "...to maximize

31 The Chilean case is described and analyzed to a prolific extent in Medina Quiroga's book, published in 1988. Therefore, the author does not attempt to rewrite the Chilean case or even to plagiarize Medina's splendid research effort. But it has to be mentioned that Medina's remarkable analysis predominantly refers to official OAS documents. However, it should be stated that this part refers mainly to Medina's findings but also pretends to include additional information and different perspectives of the case.

32 Lawrence J. LeBlanc, *The OAS and the Promotion and Protection of Human Rights*, The Hague 1977, p. 147.

33 IACHR – Report on the Work Accomplished by the IACHR During its Twenty-Seventh Session (February 28 through March 8, 1972), OEA/Ser.L/V/II. 27, Doc. 42 rev. 1, 25 May 1972, Original: Spanish, p. 1-3. In addition, OAS Secretary General Galo Plaza knew president Allende personally. Letter from Manuel Bianchi to Justino Jiménez de Aréchaga, Santiago de Chile, September 27, 1971 (IACHR files).

pressures on the Allende government to prevent its consolidation...”³⁴ Together with the strong domestic right-wing and US opposition against Allende’s Socialist project, the government’s own shortcomings resulted in an increasing social and political polarization to which the armed forces attempted to present themselves as the guardians of law and order.

On September 11, 1973, the Chilean military seized power in that Andean country. The democratically elected government was overthrown by a bloody military coup during which president Allende presumably died by committing suicide. According to unclassified documents released in recent years, the involvement of the US in the preparation of the coup was more significant than US officials had admitted decades before. The military government led by General Augusto Pinochet Ugarte initiated a monetarist and liberal economic policy and simultaneously suspended many basic rights through the proclamation of a state of siege and installed military courts. In the beginning of the military rule in Chile, thousands of persons ‘disappeared’ and were tortured or detained without charges. In spite of these flagrant abuses, the new government under General Pinochet claimed to embrace Christian values and the restoration of democracy to defend against the growing Communist subversion.³⁵ The Chilean coup led to demonstrations in North America and Europe, where anti-Pinochet militants rallied against the Pinochet regime. The human rights violations prevailed upon existing non-governmental organizations to focus on Chile and led to the establishment of many new human rights NGOs in Chile³⁶, the US and Europe. In contrast to other countries of

34 National Security Council, National Security Decision Memorandum, Henry A. Kissinger, Subject: Policy Towards Chile, Top Secret/Sensitive Eyes Only, Washington, D.C., November 9, 1970, p. 1 (NSA files).

35 Hugo Frühling – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Chile 1960-1990, in: Wolfgang S. Heinz/Hugo Frühling – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Brazil, Uruguay, Chile, and Argentina 1960-1990, The Hague 1999, p. 456.

36 See, for example, Patricio Orellana/Elizabeth Q. Hutchinson – El movimiento de Derechos Humanos en Chile, 1973-1990, Centro de Estudios Políticos Latinoamericanos Simón Bolívar, Santiago de Chile 1991, p. 11; Brian Loveman – Chilean NGOs: Forging a Role in the Transition to Democracy, in: Charles A. Reilly (ed.) – New Paths to Democratic Development in Latin America, The Rise of NGO-Municipal Collaboration, Boulder/London 1995, pp. 124-125.

the region, in Chile there were educated middle class members among the victims who enjoyed vivid contacts to Europe or North America and consequently sought international attention and also sent complaints to the IACHR.³⁷ Prior to this coup, Chile had been seen as a symbol for democracy in Latin America, and the fact that a military coup could oust an elected government in Chile suggested that now this could happen elsewhere.³⁸ Sikkink describes the effect of the coup as a "...watershed event in the creation of human rights NGOs."³⁹ Almost parallel to the emergence of the human rights movement the women's movement began to grow.⁴⁰ The economic crisis that started

37 Interview with Dean Tom Farer, Denver, Colorado, August 30, 1999.

38 Margaret E. Keck/Kathryn Sikkink – *Activists beyond Borders*, Advocacy Networks in International Politics, Ithaca 1998, p. 22.

39 Kathryn Sikkink – *Nongovernmental Organizations, Democracy, and Human Rights in Latin America*, in: Tom J. Farer (Ed.) – *Beyond Sovereignty, Collectively Defending Democracy in the Americas*, Baltimore/London 1996, p. 155.

40 Clearly remarks, "Women had been in the forefront of human rights organizing since the 1973 coup." Edward L. Clearly – *The Struggle for Human Rights in Latin America*, Westport/London 1997, pp. 13, 48. Women were particularly affected by the economic policy of the military regime, which reduced resources for the social, educational and health sector. This caused unemployment and an increasing poverty, by which women were affected the most. Those deteriorating developments led women to organize themselves in self-education groups, economic organizations but also human rights groups. This process drastically contradicted to Pinochet's view of women's position in society: "Ironically, Pinochet used an exaggerated version of the ideology of traditional motherhood in an attempt to *depoliticize* women." Patricia M. Chuchryk – *From Dictatorship to Democracy: The Women's Movement in Chile*, in: Jane S. Jaquette (Ed.) – *The Women's Movement in Latin America. Participation and Democracy*, Boulder/Oxford 1994, pp. 68/69, 73/74, emphasis in the original. See also: Georgina Waylen – *Women's activism, authoritarianism and democratisation in Chile*, in: Nickie Charles/Helen Hintjens (Eds.) – *Gender, Ethnicity and Political Ideologies*, London/New York 1998, pp. 146-167. Unlike Pinochet's vision of apolitical and loyal mothers, military rule in Chile brought women "...to question their marginalization in the public, political sphere and to reject their relegation to the private sphere, where their roles were defined exclusively in terms of their reproductive potential." Chuchryk, pp. 74/75. In January 1975, however, the Chilean government approved by a decree-law the Inter-American Convention on the Granting of Civil Rights to Women, signed in 1948. The IACHR commented: "As stated in the preamble of that decree, this measure is in response to the need to ratify international agreements aimed at establishing equality between men and women in the field of civil rights." Annual Report of the IACHR For the Year 1975, To the General Assembly, OEA/Ser.P AG/doc. 632/76, 19 April 1976, Original: Spanish, p. 11.

in Latin America with the OPEC cartel's decision to raise oil prices prompted social unrest, from which the urban poor and women were most often victims. The resistance against military dictatorships also led to a solidarization of women.⁴¹ Another factor for the rise of the women's movement can be found in the effects of the authoritarian rule: while it forcibly depoliticized men,⁴² it led to an unintended mobilization of women who were requesting information on the whereabouts of their husbands and sons.⁴³

As a reaction to international criticism, the Chilean Junta began a strategy of public relations and lobbying particularly in the United States in order to improve its bad image as a human rights violating government.⁴⁴ In the meantime, the United States provided increasing assistance and diplomatic support to the junta until 1976.⁴⁵ Schoultz comments that particularly the Nixon and Ford administrations tried to counter proposals that the United States halt aid or sanction human rights violating governments by downgrading those abuses as merely 'individual excesses'.⁴⁶

The first reactions of the OAS Member States towards the coup in Chile were quite different; while some governments were uneasy, other OAS Members openly welcomed the *Putsch* as a preventive measure to avoid a second Cuba in the Hemisphere.⁴⁷ In 1974, an OAS special consultative committee prepared a study on the "Marxist-

41 Edward L. Clearly – *The Struggle for Human Rights in Latin America*, Westport/London 1997, pp. 13/14.

42 Men were forced to abstain from politics because any oppositional activity could be interpreted as "subversive" and thus endanger the man's very life.

43 "Some in the human rights and feminist movements made a connection between the recurring pattern of military dictatorships in Latin America and the prevalence of authoritarian relations in society in a whole and in the family in particular." Jane S. Jaquette (Ed.) – *The Women's Movement in Latin America, Participation and Democracy*, Boulder/Colorado, Oxford 1994, pp. 3, 4.

44 The Chilean government hired public relations agencies like Worden & Company and Dialog. Lars Schoultz – *Human Rights and United States Policy toward Latin America*, Princeton 1981, p. 52.

45 Frühling, p. 590.

46 Schoultz, p. 6.

47 Medina Quiroga, p. 262. In March/April 1974, the Inter-American Development Bank, which had never granted a loan requested by Allende's government, approved two major loans to Chile. *Washington Post*, April 26, 1974, p. A23.

Leninist Process in Chile,” which served as a justification for the September coup.⁴⁸

Medina Quiroga names two factors that led to the first visit by an IACHR representative, only a month after the coup: first, the Chilean Junta had to prove their promise to restore legal order by at least an appearance of legality. Second, the military was not indifferent towards the OAS and the opinion of its Member States.⁴⁹ In fact, the Chilean government never challenged the jurisdiction of the IACHR to conduct on-site investigations; but it did criticize the Commission’s methodology, particularly in relation to the presumed lack of objectivity of the sources and information used.⁵⁰ This constituted a typical model case of governmental behavior arguing within the logic of the circumstantial relativism.

Probably a letter to the Editor of the *New York Times* by Prof. Thomas Buergenthal prompted US Senator Edward Kennedy to request a visit of the IACHR to Chile.⁵¹ In addition to this, there is reason to believe that Commission members such as the Uruguayan Jiménez de Aréchaga or the Venezuelan Aguilar, who emphatically rejected the coup out of their deeply felt loyalty to the law, initiated the involvement of the IACHR. The activism and dedication of some members led the IACHR to speak outwardly with a unanimous voice.⁵² On September 17, 1973 the IACHR requested to send its Executive Director to Chile. The Commission responded fast to the coup after having received communications transmitted by Amnesty Inter-

48 Special Consultative Committee on Security Against the Subversion of International Communism – The Marxist-Leninist Process in Chile, Study prepared by the SCCS at its Twenty-First Special Meeting 1974, OAS Official Documents OAS/Ser.L/X/II.36 (English). Such report almost appears like the pamphlets of the Argentine junta that sought to discredit foreign accusations of human rights violations; it employed a similar strategy (compare chapter III. 3.). The inquiry strictly exploits deficiencies and obstacles caused by Allende’s Popular Unity government and blames ties with the Soviet Union and Cuba while neglecting Pinochet’s role or the US involvement.

49 Medina Quiroga, p. 262.

50 Dinah Shelton – Utilization of fact-finding missions to promote and protect human rights: The Chile case, in: *Human Rights Law Journal*, October 1981, Vol. 2, Parts 1-2, p. 20.

51 *New York Times*, September 28, 1973, p. 30. See Letter from Thomas Buergenthal to Edmundo Vargas Carreño, Executive Secretary, Atlanta, December 19, 1985 (IACHR files). Wood, p. 140.

52 Interviews.

national and the International Commission of Jurists alleging massive human rights violations⁵³ and asking for permission to visit the country.⁵⁴ The Commission's solicitation was heeded ten days later and Executive Secretary Luis Reque traveled to Santiago de Chile – just a few weeks after the *golpe* had taken place. Luis Reque was granted a visit to travel to Chile between October 12 and 17, 1973.⁵⁵ Apparently, the Chilean junta saw itself obliged to permit Reque's visit since it stood for 'law and order': By allowing the Commission's Executive Secretary to visit Chile, the junta could present itself as committed to its international obligations and underline its (ostensible) interest in human rights issues. Unlike common published versions, there is also another possible explanation for the fact that the Junta allowed Reque to visit Chile scarcely a month after the coup. According to several interviews, it was mainly Reque himself who believed that the Chilean junta might have thought it had invited a renowned Bolivian General with the same name and one of Ernesto 'Che' Guevara's enemies in 1967, or at least one of his relatives. As Luis Reque Terán also had Bolivian nationality, the mix-up was perfect.⁵⁶ Conversely, the official cablegrams sent to the Chilean government to ask for Reque's visit clearly mentioned that he was related to the Human Rights Commission – probably an unusual institution for a General.⁵⁷ Nevertheless, if the aforementioned version were true, it would contradict the assumption that the Chilean government immediately and voluntarily cooperated with the Commission. Moreover, it would suggest that the 'cooperation' of the Junta with the Commission occurred by accident.

53 IACHR – Report on the Work Accomplished by the IACHR at its Thirty-First Session, (October 15-25, 1973), OEA/Ser.L/V/II. 31 doc. 54 rev.1, 12 June 1974, Original: Spanish, pp. 13/14; Nacimiento, pp. 104/105.

54 Cablegram, Justino Jiménez de Aréchaga, Chairman, and Luis Reque, Executive Secretary, to Ismael Huerta Díaz, Minister of Foreign Affairs, September 17, 1973; Cablegram, Justino Jiménez de Aréchaga, and Luis Reque, to Ismael Huerta Díaz, September 19, 1973 and another cablegram from September 26, 1973 (IACHR files).

55 Medina Quiroga, p. 263.

56 See Washington Post/Potomac, December 12, 1976, pp. POT 14, 68/69. Interviews.

57 See IACHR files (footnote 54). In addition, the IACHR Annual Report of 1974 mentioned a cablegram from the Chilean junta sent on September 26, 1973, which assured the Commission to comply with its inter-American commitments. Informe Anual presentado por la CIDH a la Asamblea General correspondiente a 1974, OEA/Ser.G, CP/doc. 399/75, 9 enero 1975, p. 52.

Regardless of how this important visit came about,⁵⁸ following his trip, Reque concluded that "...violations were occurring, but that press reports of torture were exaggerated ... and that the situation called for a Commission visit to Chile..."⁵⁹ As a result of Reque's trip to Chile, he presented a critical report before the Commission. Accordingly, Reque's visit to Chile was followed by requests of the Commission directed to the Chilean junta to provide information. The Chilean government did cooperate with the Commission and handed over some requested information. This helped to resolve some individual cases but could not clarify the general situation of human rights in Chile.⁶⁰ Moreover, the provided information contrasted very much from other sources, and consequently, the Commission requested an on-site visit to Chile.⁶¹ In March 1974, 33 US Congress members asked the entire Commission to follow up Reque's visit.⁶² It was difficult to obtain the permission for an IACHR on-site evaluation, but the Commission distributed its correspondence with the reluctant government publicly, a tactic which worked in its favor. Eventually, the permission for the visit was granted.⁶³ The IACHR visit took place from July 22 through August 2, 1974. The Commissioners Justino Jiménez de Aréchaga, Manuel Bianchi Gundián, Robert F. Woodward, Carlos A. Dunshee de Abranches and Genaro R. Carrió participated in the *in loco* observation. Several staff lawyers and secretaries of the Executive Secretariat assisted them.⁶⁴ The *First Report on the Status of Human Rights*

58 See Washington Post, June 25, 1992.

59 Cited as in Shelton, p. 6.

60 LeBlanc, p. 151.

61 Medina Quiroga, pp. 264/265.

62 Washington Post, July 24, 1974, p. A28; IACHR – Report on the Work Accomplished by the IACHR at its Thirty-Second Session (April 8-18, 1974), OEA/Ser.L/V/II.32 doc.31 rev.1, 20 February 1975, Original: Spanish, p. 11.

63 "The role of publicity is reflected in the first IACHR Report. The Chilean government had indicated its unwillingness to permit an on-site visit, the request being labeled "somewhat" premature. Six days following its cabled reply to Chile, the IACHR issued a press release containing the texts of the request for a visit, the Chilean reply and the IACHR response. The following day the Chileans approved an on-site visit." Shelton, p. 36, footnote 226.

64 Besides Executive Secretary Luis Reque, staff lawyers Edgardo Holzman and Alvaro Gómez went to Chile. The Brazilian IACHR member Dunshee de Abranches joined his colleagues later. Inter-American Commission on Human Rights – Report on the Status of Human Rights in Chile, Findings of "on the

in Chile is based mainly on findings and facts of the on-site visit. During the Commission's visit to Chile, its members realized the following activities: Interviews with authorities and with representatives of the International Red Cross and the UN High Commissioner for Refugees; receipt of new communications and statements of witnesses on communications already being processed by the Commission as well as statements on the general situation of human rights in the country; visits to detention centers; observation of trials being conducted by military tribunals; the study of dossiers of military as well as of ordinary tribunals, and the investigation of the Junta's legislation affecting human rights.⁶⁵ According to Commission member Woodward, Commissioner Dunshee was particularly interested in confirming Salvador Allende's suicide, most probably to discharge the allegations against the new regime in power for having killed the former president.⁶⁶

Medina Quiroga considers the visits to detention centers probably the most important activity realized by the Commission, though the Commissioners could not inspect the five detention centers with the worst reputation because they were declared 'military areas'. The interrogated prisoners stated that they had not been tortured but that torture had taken place in other locations.⁶⁷ During its visit, the IACHR received 575 new communications.

After concluding a first version of the Commission's findings, the IACHR sent a preliminary note concerning the general situation of human rights to the Chilean government. But Chile's military Junta refused to take the recommended measures. In the final version of its First Report on Chile, the IACHR concluded that since September 11, 1973, "extremely serious violations of human rights" had occurred in

spot" Observations in the Republic of Chile, July 22-August 2, 1974, OEA/Ser. L/V/II.34, Doc. 21, 25 October 1974, Original: Spanish, p. 60.

65 Medina Quiroga, p. 265. Furthermore, the Commission expected to get identification cards from the Chilean authorities, which would have enabled them to visit official bureaus freely. Nonetheless, the IACHR never received those documents and therefore was not able to conduct unannounced investigations and visits. LeBlanc, p. 155; Medina Quiroga, p. 266. See the IACHR observation in Argentina (chapter III. 3.).

66 Interview with Robert Woodward, Washington, D.C., December 6, 1999.

67 LeBlanc, p. 155.

Chile under the present government.⁶⁸ In the introduction, the Commission stated that it did not consider preceding events related to the foregoing government of Salvador Allende.⁶⁹ This is an important argument because in the following years, by employing the circumstantial relativism, Chilean officials would argue with the conditions and circumstances before the coup that – in their view – made a military takeover necessary.⁷⁰ Interestingly, the report acknowledges that the Commission did not witness any public unrest on the streets or elsewhere during its visit. This statement enabled possible criticism on the report's findings. But it also contradicted with the Chilean justification to declare a state of internal war. Likewise, the remarks made by former Commission member Robert Woodward are of interest in this context. Woodward, who participated in the on-site visit, stated that the accusations made by prisoners often sounded very similar. The doubt arose that those testimonies of torture victims were planned and faked.⁷¹ On the other hand, the transcriptions of the prisoners' reports made at the detention camp Ritoque provide very impressive testimonies.⁷² These testimonies could also face doubts regarding the applied methods. In general, the chapter on detention centers and prison conditions is indeed a very important and impacting part of the First Chile Report.

In regard to the different human rights mentioned in the Report, the IACHR confirmed that ten months after the coup, 5,500 persons were deprived of their personal liberty, the remedies of Amparo and Habeas Corpus were absolutely ineffective, the right to due process

68 Comisión Interamericana de Derechos Humanos – Informe sobre la situación de los derechos humanos en Chile, OEA/Ser.L/V/II.34, doc. 21, 25 octubre de 1974, Original: español, p. 166. Medina Quiroga, pp. 269/270.

69 Inter-American Commission on Human Rights – Report on the Status of Human Rights in Chile, Findings of “on the spot” Observations in the Republic of Chile, July 22-August 2, 1974, OEA/Ser. L/V/II.34, Doc. 21, 25 October 1974, Original: Spanish, p. 1.

70 In January 1975, the Chilean ambassador even went so far as to claim that under the Allende government there were 125 political assassinations – without mentioning any political killing under the Pinochet rule. Consejo Permanente, Acta de la Sesión Ordinaria Celebrada el 22 de Enero de 1975: Nota de la Comisión Interamericana de Derechos Humanos referente a las Observaciones del Gobierno de Chile al Informe de dicha Comisión, pp. 10, 11.

71 Interview with Robert Woodward, Washington, D.C., December 6, 1999.

72 CIDH – Informe sobre Chile 1974, Original: español, pp. 74-134.

was seriously affected and political rights had been abolished. Furthermore, the Commission did not state that there was a “policy of torture” but that it was certain that the government did not employ an effective “policy against torture” either. The freedom of expression and communication of thought and of information were seriously affected through censorship.⁷³ However, although women were in particular affected by the military rule, the report did not include any special chapter on or mention women’s rights or the general situation of women in Chile.

The report concluded that the present Chilean government had violated the articles I, II, IV, VIII, XVII, XVIII, XX, XXI, XXII, XXV and XXVI of the American Declaration of Rights and Duties of Man.⁷⁴ Further, the First Chile Report referred in its introduction to the American Human Rights Convention, regarding Article 27, which deals with the suspension of guarantees.⁷⁵ The Report argues that Article 27 represents the “most accepted doctrine”.⁷⁶ This reference, however, is a difficult issue because the Convention, which was approved in 1969 and entered into effect in 1978, was not in force and not even ratified by Chile at that time. By the declaration of being “incompetent” to judge “political conditions,” the Commission tried to discredit in advance any criticism implying a certain political orientation of the IACHR.⁷⁷ Obviously, this strategy did not work because later the Chilean government reiterated its criticism on the IACHR for its lack of covering the events before September 1973.

The Report on human rights in Chile was the longest and most critical publication the Inter-American Commission on Human Rights had published hitherto.⁷⁸ This report was written in a touching style, which contrasts with many of the following Special Reports,⁷⁹ and the

73 Ibid., pp. 167/168.

74 Ibid., p. 169.

75 IACHR – Report on Chile 1974, p. 3.

76 IACHR – Report on Chile 1974, pp. 2/3.

77 LeBlanc, p. 158.

78 LeBlanc, pp. 157/158.

79 In accordance, the government’s rebuttal stressed that the chapter on places of detention was written in a “deliberately dramatic tone”. Observations by the Government of Chile on the “Report on the Status of Human Rights in Chile” prepared by the Inter-American Commission on Human Rights, OEA/Ser.G, CP/doc. 385/74, 4 December 1974, Original: Spanish, pp. 23-25. Interviews.

US State Department believed that this report was “critical.”⁸⁰ Initially, it seemed that the Commission approved the First Chile Report unanimously. However, later events showed that the approval had not been unanimous or that this situation at least had changed. As early as in December 1973, the Commission’s Chairman Jiménez de Aréchaga revealed to Executive Secretary Reque his doubts about the integrity of one Commission member – the Chilean Manuel Bianchi.⁸¹ Eventually, on October 26, 1974, the Chilean Commission member Manuel Bianchi sent a 25-page letter to the IACHR’s chairman, Andrés Aguilar, explaining his dissenting vote.⁸² In that letter, Bianchi pointed out mistakes made and omissions committed by the IACHR to the detriment of the Chilean government. Medina Quiroga concludes that “[t]he letter seems to have been written in some haste, since many of the facts it mentioned as having been omitted by the Commission were contained in the report.” Bianchi, in any case, did not share the position of the Commission’s majority.⁸³

While newspapers in the Western Hemisphere and in Europe published entire parts of the document after its presentation,⁸⁴ the Chilean government responded critically to the First Report. The junta presented an unusually detailed rebuttal concerning the report’s findings,

80 Department of State, ARA, John A. Karkashian, to ARA, George Lister, Subject: Human Rights in Chile (Background for Congressional Presentation on FY 1976 Security Assistance Proposal), Washington, D.C., April 4, 1975, p. 3 (NSA files).

81 Letter from Justino Jiménez de Aréchaga to Luis Reque, Montevideo, December 10, 1973 (IACHR files). Jiménez worried that “...no quiero ni pensar en que olla de grillos transformaremos a la Comisión, si cada uno de nosotros comienza a actuar como agente de su gobierno.” See Letter from Justino Jiménez de Aréchaga to Manuel Bianchi Gundián, Montevideo, December 7, 1973 (IACHR files). Further, Jiménez worries that documents sent from the IACHR to the OAS office in Montevideo sometimes had not reached the recipient.

82 Letter from Manuel Bianchi Gundián to Andrés Aguilar, October 26, 1974 (IACHR files).

83 Medina Quiroga, pp. 271/272. Bianchi also exchanged information and opinions with the Chilean Permanent Representative, Manuel Trucco. Letter from Manuel Trucco to Andrés Aguilar, Washington, D.C., November 7, 1975 (IACHR files). In December 1974, an extraordinary meeting of the Commission regarding the human rights situation in Chile was apparently cancelled. Cablegram from Luis Reque to the Commission members, Washington, D.C., December 16, 1974 (IACHR files). The Cablegram calls for this meeting but the handwritten note “Cancelado” suggests that it never took place.

84 Annual Report of the IACHR For the Year 1975, To the General Assembly, OEA/Ser.P AG/doc. 632/76, 19 April 1976, Original: Spanish, p. 254.

in which it reiterated the importance of the events before the coup, criticized shortcomings and deplored the Commission's "preconceived conclusions".⁸⁵ The Chilean representative at the OAS Permanent Council Meeting on December 4, 1974, requested Chile's observations on the report to be sent to the General Assembly. He criticized the report harshly and urged a real debate on the report instead of just a "taking of note." The Permanent Council sent Chile's observations to the General Assembly without judgment, though this would have been in its competence.⁸⁶ Probably, the Permanent Council opted not to comment on the issue in an attempt to avoid problems with Chile and to maintain the organization's non-controversial diplomatic tradition in regard to human rights. Quiroga summarizes the criticism of the Chilean government to the report as follows: a) omission of facts which favored the government's position; b) political factors were not taken into consideration, also due to the short duration of IACHR's visit; c) rejection of the report's criticism on the acting of special legislation under military jurisdiction and finally, d) accusations regarding the right to life or to personal security and liberty made in the Report were impossible to charge since usually the identity of the complainants was not given and facts unproven.⁸⁷ As Chile's remarks on the Commission's report referred more to individual cases and not to the general report, Chile's government demonstrated its initial unfamiliarity with the rules of the Commission.⁸⁸ Coinciding with the report's release, in December 1974 the US Congress adopted the Kennedy amendment that halted all military aid to Chile. In 1975, General Pinochet also referred to the Inter-American Commission on Human Rights when he spoke about "international organizations" infiltrated by a "Marxist-Leninist campaign".⁸⁹ In addition, the *Washington Post* commented that there was without any doubt a campaign to denounce

85 Further, the Chilean government attached material on terrorist acts against the diplomatic missions of Chile abroad and of attacks against the armed forces and sabotage activities. Observations by the Government of Chile on the "Report on the Status of Human Rights in Chile" prepared by the Inter-American Commission on Human Rights, OEA/Ser.G, CP/doc. 385/74, 4 December 1974, Original: Spanish. *Washington Post*, December 9, 1974, pp. A1, A14.

86 *Washington Post/Potomac*, December 12, 1976, p. POT 14, 69. Medina Quiroga, pp. 272/273.

87 Medina Quiroga, pp. 273/274.

88 Medina Quiroga, p. 274. See Chapter II. 1.

89 Wood, p. 133.

the repression in Chile, organized by Communist and Socialist groups outside Chile, and in particular in Western Europe.⁹⁰

It is evident that the performance of the Inter-American Commission on Human Rights and the later resolutions adopted by the political organs of the OAS concerning the Chile case were of historical dimension. As Medina Quiroga puts it:

“Although ... the political organs of the OAS were reluctant to participate, the activities undertaken by the Inter-American Commission on Human Rights were such that its reports on Chile succeeded in breaking the practice of the OAS General Assembly of never debating the Commission’s reports during its meetings. The Chilean case thus constitutes a turning point in the development of the inter-American system for the protection of human rights.”⁹¹

Wood comments that until the mid- and late-seventies the IACHR had been isolated within the General Secretariat and also ignored by the Permanent Council and General Assembly. Moreover, the Commission’s chairman had not been invited to present the reports of the IACHR before the General Assembly until 1976.⁹² According to LeBlanc, who bases his view on newspaper reports, there were many who expected the 1975 General Assembly to discuss the Chilean report.⁹³ Before the Assembly took place, many foreign ministers of OAS States tried to avoid a discussion on the Chilean human rights record. For instance, the foreign minister of Costa Rica, Gonzalo Facio, proposed merely to ‘take note of’ the report without discussion. At that time, the election of a new Secretary General of the OAS had been postponed and Facio was considered a compromise candidate. This abandonment of traditional Costa Rican support for human rights could be explained by his ambitions to get the desired position. His aspirations to head the OAS might have led him to take a moderate and more traditional position on human rights issues to gain the Member States’ support.⁹⁴ Surprisingly, it was the Chilean government,

90 Washington Post, August 4, 1974, p. A13.

91 Medina Quiroga, p. 261.

92 Wood, pp. 130/131.

93 LeBlanc, pp. 161/162.

94 Commissioner Justino Jiménez de Aréchaga commented Facio’s proposal as follows: “The commission is presently the most vigorous organ of the OAS. If they

which forced the issue to the agenda of the General Assembly. The junta wanted to discuss the report, which was considered unfair, and to deal with the unauthorized passing of the report on to the United Nations Human Rights Commission by Luis Reque.⁹⁵ The Chilean OAS delegation put Reque's capability and responsibility for his post into question and supported an investigation carried out by the General Secretariat. Likewise, the Chilean Representative decided to direct his country's correspondence to the Commission's chairman, Andrés Aguilar, and not to answer requests signed by Reque.⁹⁶ Moreover, the Chilean Permanent Representative, Manuel Trucco, began to send official letters to Aguilar's home in Caracas – which was, besides the symbolic rejection of Reque as Executive Secretary, also a complication of the correspondence between the Commission and the Chilean government.⁹⁷ Finally, Trucco announced that official correspondence to Aguilar must be sent through the OAS Secretary General in order to “facilitate” the communication.⁹⁸

The holding of the Fifth Regular Session of the OAS General Assembly in Washington, D.C., from May 8 through 19, 1975, was accompanied by criticisms on the ineffectiveness and the high bureaucratic expenses of the organization.⁹⁹ Wood observes that the General Assembly in 1975 did not vary very much from the previous meetings.¹⁰⁰ Kokott, however, judges the 1975 resolution on the Chile report as a novelty.¹⁰¹ The Washington Post stated that the 1975 Assembly “...performed a diplomatic dance around the commission's report, carefully ignoring its substance.” In spite of this fact, US Secretary of

want to kill it, [this will] kill it.” Quoted as in the Washington Post, May 15, 1975, p. A4.

95 Washington Post, May 15, 1974, p. A 4. The Commission unanimously backed Reque with regard to the charges brought up by the Chilean delegation.

96 Letter from Manuel Trucco, Permanent Representative, Chilean OAS Delegation, to Galo Plaza, Secretary General, Washington, D.C., June 10, 1975 (IACHR files).

97 Letter from Manuel Trucco, Permanent Representative, Chilean OAS Delegation, to Andrés Aguilar, Washington, D.C., November 6, 1975 (IACHR files).

98 Letter from Manuel Trucco, Permanent Representative, Chilean OAS Delegation, to Andrés Aguilar, Washington, D.C., November 7, 1975 (IACHR files).

99 Washington Post, May 18, 1975, p. A2.

100 Wood, p. 130.

101 Kokott, p. 113. See *Nacimiento*, p. 122.

State, Kissinger, showed an “uncustomary interest in Latin American affairs.”¹⁰²

At the Session of the General Assembly, Costa Rica presented a draft resolution on the Chile Report in the First Committee.¹⁰³ The Report on Chile had been debated in a private meeting, of which this draft resolution by Costa Rica was the result. The Chilean delegate, Sergio Diez, criticized the fact that the report – a reserved document – had been disseminated and become a sort of “bestseller.”¹⁰⁴ In the Assembly in 1975, the chairman of the Commission, Andrés Aguilar, insisted on a vote on his right to present the reports. The Member States voted against this proposal, although it would have been Aguilar’s right to speak before the General Assembly. The representative of Mexico wanted the Commission’s chairman to present the Report in the public meeting, but this was prevented by a five-to-seven vote.¹⁰⁵ The representative of the United States, Assistant Secretary of State for Latin America, William D. Rogers, supported the Commission’s report, although the US abstained when the Committee voted on whether Aguilar should present the report or not.¹⁰⁶ In a speech several months later, Rogers further proclaimed to strengthen the IACHR fi-

102 Washington Post/Potomac, December 12, 1976, p. POT 14, 69. Washington Post, May 9, 1975, p. A26.

103 OEA/Asamblea General, Quinto Período de Sesiones, Washington, D.C., del 8 al 19 de mayo de 1975, OEA/Ser.P/V-0.2, 11 junio 1975, Volume II, Parte 2, p. 182.

104 OEA/Ser.P/V-0.2, 11 junio 1975, Volume II, Parte 2, p. 185.

105 While 11 delegates abstained in the vote, Mexico, Panama, Colombia, Peru and Jamaica favored Aguilar’s right to present the report, the US abstained. However, William D. Rogers spoke on behalf of the Chairman’s right to speak. OEA/Asamblea General, Quinto Período de Sesiones, Washington, D.C., del 8 al 19 de mayo de 1975, OEA/Ser.P/V-0.2, 11 junio 1975, Volume II, Parte 2, pp. 188/189.

106 OEA/Ser.P/V-0.2, 11 junio 1975, Volume II, Parte 2, p. 188/189. Rogers had previously assured Congress members that he would supply US support to the Commission. Washington Post, May 15, 1975, p. A4. However, a State Department document contains the following comment: “...Chile was able, with our support, to prevent a resolution passing on the Inter-American Human Rights Commission report at the OASGA last May. At the time, we made a forthcoming statement on human rights and assured Congressman Fraser and other critics that Chile was making progress on the human rights issue. Our tactics, and the happy results of the OAS General Assembly, were all based on Chile’s invitation to the UN Working Group.” Department of State, Briefing Memorandum, From: ARA – William D. Rogers, To: The Secretary, July 18, 1975, p. 2 (NSA files).

nancially and in regards to its personnel.¹⁰⁷ Likewise, a US Department of State Report stated that it supported the IACHR and wanted its report to merit the corresponding consideration of the General Assembly.¹⁰⁸ Apparently, this position also was an attempt to appease both Houses in the US who had forced the government to cut military sales and credits.¹⁰⁹ The Costa Rican draft resolution was approved in the First Committee without a debate and without a roll call, which apparently surprised the Panamanian and Mexican representatives. The Chilean delegate remained silent, which lead Medina Quiroga to assume that he voted in favor of the resolution.¹¹⁰

Similar to the lack of open controversy at the First Committee, the plenary meeting of the General Assembly approved the Report on Chile without debate.¹¹¹ The adoption of a separate resolution on the IACHR Report on Chile must be regarded as a significant change. Although the resolution text lacked an evaluation and did not explicitly refer to details of the Special Report on Chile, it requested the IACHR to continue observing the situation in that country. As in former years, the General Assembly adopted a neutral resolution with which it thanked the Commission for its Annual Report.¹¹² Therefore, the resolution on a Special Report concerning a particular country has to be seen as an opening for the inter-American system in terms of human rights policy – also if the publicity effect of an OAS resolution is con-

107 Discurso del Honorable William D. Rogers, Subsecretario de Estado para Asuntos Interamericanos, preparado para pronunciarlo ante la Sociedad Panamericana, Boston, 4 de noviembre de 1975: *Derechos Humanos y Política Exterior en América Latina*, in: OEA/Ser. G, CP/INF. 771, 5 diciembre 1975, Original: inglés.

108 Department of State, ARA, John A. Karkashian, to ARA, George Lister, Subject: Human Rights in Chile (Background for Congressional Presentation on FY 1976 Security Assistance Proposal), Washington, D.C., April 4, 1975, p. 4 (NSA files).

109 National Security Council, Action Memorandum from General Scowcroft to Stephen Low, Subject: Disarray in Chile Policy, Confidential, Washington, D.C., July 1, 1975 (NSA files).

110 OEA/Ser.P/V-0.2, 11 junio 1975, Volume II, Parte 2, p. 193. Medina Quiroga, p. 275.

111 Medina Quiroga, pp. 275/276. See: AG/RES. 190 (V-0/75): Informe de la CIDH: “La situación de los derechos humanos en Chile”, in: Comisión Interamericana de Derechos Humanos – Diez años de actividades 1971-1981, Washington, D.C. 1982, p. 362.

112 See Nacimiento, pp. 121/122.

sidered.¹¹³ Interestingly, during the General Assembly the Venezuelan Foreign Minister, Ramón Escovar Salom, stressed his government's support for a strengthening of the OAS and called for close relations with the United States.¹¹⁴ This statement appeared surprising since Venezuela had been one of the fiercest critics of the policies of both the US and the OAS and had also supported the creation of SELA.

In May 1975, shortly after the General Assembly, the IACHR considered the possibility of asking the Chilean authorities for another on-site observation scheduled for October 1975, but this was not successful.¹¹⁵ Apparently, the US government held informal meetings with the Chilean authorities regarding the roles of the International Red Cross and the IACHR.¹¹⁶ However, the Chilean government tried to weaken the Commission's authority by accusing its Executive Secretary of being partial.¹¹⁷ LeBlanc describes this strategy as "an aggressive campaign of attacks against the Commission", which finally led three Commissioners – Dr. Justino Jiménez de Aréchaga, Dr. Ge-

113 At the same meeting of the General Assembly, Paraguay requested to include a statement made at the Permanent Council in which it expressed its opposition to the term "genocide" used in the IACHR's Annual Report. While the Commission found that Paraguay's government mistreated its indigenous population systematically, the Paraguayan Permanent Representative emphasized his government's pride to have indigenous roots in that country. *Declaración del Embajador Representante del Paraguay en la Sesión ordinaria del Consejo Permanente celebrada el 5 de marzo de 1975 referente al Informe Anual de la Comisión Interamericana de Derechos Humanos correspondiente a 1974*, in: OEA/Ser.P/V-0.2, 11 junio 1975, Volume II, Parte 2, pp. 248-251.

114 *Washington Post*, May 13, 1975, p. A3.

115 CIDH – Informe sobre la labor desarrollada por la Comisión Interamericana de Derechos Humanos en su trigésimoquinto período de sesiones, (del 20 al 30 de mayo de 1975), OEA/Ser.L/V/II.35 doc. 45 rev.1, 28 noviembre 1975, Original: español, p. 123.

116 Department of State, ARA, John A. Karkashian, to ARA, George Lister, Subject: Human Rights in Chile (Background for Congressional Presentation on FY 1976 Security Assistance Proposal), Washington, D.C., April 4, 1975, p. 4 (NSA files).

117 Chile did not describe the IACHR as part of the accused "international defamation campaign" against the Pinochet government. In contrast, the government did blame NGOs, the press, exile groups, the nonalignment movement, UNESCO, the United Nations for their biased reporting or even for being "infiltrated by international Communism". The author suggests that this was the case because it counted with the approval of the OAS and of Latin American sister nations. See *Gobierno de Chile – La situación actual de los derechos humanos en Chile*, Octubre de 1975, Vol. I, pp. 23-37 (Biblioteca Nacional, Santiago de Chile). Interviews.

naro R. Carrió and Dr. Robert F. Woodward – to not seek re-election because they were reportedly discouraged by the treatment of human rights issues and the inactivity at the OAS.¹¹⁸ According to the *Washington Post*, all three members cited the decision to schedule the General Assembly in Chile as the final event, which contributed to their decision to withdraw from the Commission.¹¹⁹ However, in an interview conducted by the author, Woodward denied having resigned as a result of pressure from the Chilean government.¹²⁰ Also Luis Reque, the Executive Secretary of the IACHR, chose to resign due to the dishonorable and sometimes intimidating campaign against him by the Chilean government,¹²¹ in spite of the fact that the Commission had supported him against the complaints.¹²² Reque's resignation was seen as a victory for those who wished to limit the Commission's influence. General Pinochet had requested Reque's ouster months before.¹²³ However, it seemed to be common knowledge that not exclusively the campaign of the Chilean military government – as officially stated¹²⁴ – caused Luis Reque's resignation but also matters of personal behavior at work. Whatever the causes for resignation, the Chilean government took advantage of the internal investigation carried out against Reque.¹²⁵ While the Commissioners backed their Executive Secretary, an internal investigative committee of the OAS decided differently. In April 1976, just a few weeks before the symbolic General Assembly in Santiago de Chile gathered, Reque resigned. He explained his decision with the "false accusations" concerning his behavior with a fe-

118 LeBlanc, pp. 162, 171. Forsythe, p. 90.

119 Washington Post, March 5, 1976, p. A16; Washington Post/Potomac, December 12, 1976, p. POT 14, 69.

120 Interview with Robert Woodward, Washington, D.C., December 6, 1999.

121 See Washington Post, March 5, 1976, p. A16; June 25, 1992; Washington Post/Potomac, December 12, 1976, p. POT 14, 70. Reque reported a threat against his 9-year old daughter to the FBI.

122 See Letter Andrés Aguilar, Chairman, to Alejandro Orfila, Secretary General, Washington, D.C., October 17, 1975 (IACHR files).

123 Washington Post, April 30, 1976, p. A22.

124 See, for instance, Washington Post, November 9, 1976, p. A16.

125 Interviews. Reque was accused of sexual harassment against a female staff member at the Secretariat. According to conversations of informal character, these accusations were very controversial and also seen as another strategy to oust Reque. See Washington Post/Potomac, December 12, 1976, p. POT 14, 70.

male lawyer at the Secretariat and the wrong denunciations brought up by the Chilean delegation against his person.¹²⁶

Between the First Report on the human rights situation in Chile and mid-1975, human rights violations in Chile continued. As the mere dealing with individual petitions was seen to be insufficient, a new special report on the general situation was necessary for the Commission.¹²⁷ The resolution of the General Assembly of 1975 had requested another report on the situation of human rights in Chile.¹²⁸ In response to this request, the Commission prepared its Second Report on Chile, which had to be presented at the Sixth General Assembly in 1976. The report only mentioned those rights which, in the Commission's view, there had been achievements. Furthermore, the Commission had chosen to request only written information by the Chilean government in order to obtain reliable documents on paper. On the one hand, this was useful to show the government's level of cooperation. On the other, the Chileans answered almost none of the IACHR's requests. Another important fact was that the Second Report did not include any specific recommendations. The Commission approved the Second Report with a reservation by the Chilean Commissioner Bianchi.¹²⁹ Medina Quiroga points out that the Second Chile Report was structured differently than the first because its findings were not based on an on-site observation.¹³⁰ It is further noticeable that the style in which the first and second reports were written is quite different. While the first report tends to appear as a piece of human rights literature, as mentioned above, the Second Report is, similar to reports that followed, more legal and characterized by a rather sober juridical language. The First Report was primarily authored by

126 Letter from Luis Reque to Andrés Aguilar, Washington, D.C., April 21, 1976 (IACHR files). Understandingly, Reque subsequently commented on OAS matters with some bitterness. See *Washington Post*, May 3, 1977, p. A18.

127 Medina Quiroga, pp. 276/277.

128 AG/RES. 190 (V-0/75): Informe de la CIDH: "La situación de los derechos humanos en Chile", in: CIDH –Diez años de actividades 1971-1981, Washington, D.C. 1982, p. 362.

129 Bianchi explained his vote with the omission of a note by Chile's Foreign Minister, Patricio Carvajal and a phrase on which the Commission could not reach an agreement. Letter Manuel Bianchi Gundián to Andrés Aguilar, Washington, D.C., October 15, 1975, pp. 6, 7 (IACHR files).

130 Medina Quiroga, p. 278.

Justino Jiménez de Aréchaga, who reportedly tried to *compose* the report rather than to *prepare* it.¹³¹

As mentioned before, during the preparation of the Second Chile Report, the government opted not to cooperate with the Commission. Nevertheless, the Chilean Ambassador Sergio Diez was allowed to present his statement on the report before the Commission on March 19, 1976.¹³² The Chilean military rulers also decided to change the direction of their defense strategy by addressing a proposal to the Preparatory Committee of the OAS General Assembly. The Chilean representative requested the creation of a new agenda point regarding human rights. Chile tried to change the Statute and Regulations of the IACHR regarding its functions to include a requirement that the Commission seek “a joint affair with the State concerned.”¹³³ Though this strategy of the Chilean regime did not succeed, it obviously meant a threat to the independence and competence of the IACHR. This was the first time that an OAS Member State proposed – though with a disguised terminology speaking of a ‘reform’ – a limitation of the Commission’s powers and functions instead of a broadening of its competence. Furthermore, the Chilean government presented observations on the report, although it had denied cooperating with the Commission during its preparation. The prevailing idea of the government’s observations could be summarized as a perceived international Communist campaign against Chile. As had occurred before, a major part of the observations dealt with the situation before the military coup in 1973.¹³⁴ Once again, the Chilean military tried to justify their actions through prior events, which in their opinion made a *golpe* necessary to restore order in the country. Particularly in March 1976, there was intense correspondence between the Chilean government and Alejandro Orfila, elected as Secretary General in 1975, and the IACHR. As described above, this occurred because Chile refused to communicate directly with the Commission’s Secretariat. In spite of

131 Interviews.

132 The Chilean delegation had requested to present its observations on the Report before the Commission. Letter from Manuel Trucco, Permanent Representative, Chilean OAS Mission, to Andrés Aguilar, Washington, D.C., March 11, 1976 (IACHR files). Inter-American Commission on Human Rights – Annual Report 1976, OEA/Ser.L/V/II.40 doc.5 corr. 1, 7 junio 1977, Original: Spanish, p. 22.

133 Medina Quiroga, pp. 278-280.

134 Medina Quiroga, p. 281.

this, the Chilean Representative did inform Chairman Aguilar about the presentation of an exposition on the human rights situation in his country by Ambassador Sergio Diez.¹³⁵

A few days before the General Assembly gathered, Alejandro Orfila complained about the impossibility of firing any of the 1,500 OAS employees in order to make the organization more effective.¹³⁶ During the meeting, US Secretary of State, Henry Kissinger, also urged cuts in the OAS bureaucracy to save the organization from irrelevance. In an evaluation elaborated by the State Department, the draft on the reform of the OAS Charter was judged as being without any vision for the system, leaving the notorious structural deficiencies that plagued the organization. Also, the Charter reform draft included the concept of collective economic security, which was considered to be completely unacceptable to the US.¹³⁷ The State Department document confirmed that the question of whether to maintain the OAS at all or not had finally been answered: The Member States did consider the organization as useful, whereby the existence of the OAS seemed to be guaranteed despite the US dominance.¹³⁸ Furthermore, the US role in the OAS provided a better position for the US to deal with Latin American countries than an organization such as SELA in which the US was not a Member State. Besides, the US regarded the development cooperation topic as a crucial and sensitive item for the General Assembly by which the Latin Americans would determine US willingness to provide support for the region. In regard to human rights, the US State Department was considering a statement in favor of human rights by the Secretary of State and evaluated possible reactions. Also, Chile's proposal to modify the IACHR's powers was seen more

135 Letter from Manuel Trucco, OAS Permanent Representative, to Andrés Aguilar, Washington, D.C., March 4, 1976 (IACHR files).

136 Washington Post, May 25, 1976, p. A16.

137 US Department of State, Briefing Memorandum, *The OAS in Perspective: What Kind of Inter-American Organization?*, June 1976, pp. 2/3 (NSA files). Washington Post, June 11, 1976, p. A20. "In fact, Latin leaders had long viewed the OAS as an instrument for controlling US political and military adventurism in the hemisphere, and they now have shifted their focus and tactics to using the OAS to control US economic activity." *Ibid.*, p. 3.

138 "So great is the power disparity that not even a solidly united Latin front (as in an OAS without the US) would restore a semblance of symmetry." *Ibid.*, p. 4.

as an attempt to weaken the Commission than to strengthen it. In general, the US judged the OAS as potentially useful for its interests.¹³⁹

Several US Congress members also urged Secretary of State, Henry A. Kissinger, not to attend the OAS Assembly in Santiago.¹⁴⁰ Kissinger did not heed these calls though he was informed by a quite appropriate report on the situation in Chile describing the repressive situation and mentioning some progress.¹⁴¹ However, the US delegation wanted to change the *modus operandi* by which the reports of the IACHR were handled. Apparently, the United States sought to lay more emphasis on human rights in the OAS.¹⁴²

Though the US, Mexico and Panama opposed, the OAS Member States had accepted Chile's proposal to hold the Sixth Regular Session of the General Assembly in Santiago. Subsequently, Mexico announced a boycott of the meeting to express its protest against the Chilean military government.¹⁴³ The fact that the General Assembly met in Santiago was considered a political triumph for the military junta. The Argentine coup d'état had taken place in March 1976. This meant that there was a majority of authoritarian rulers present at the General Assembly.¹⁴⁴ Medina Quiroga points out that the Chilean government also expected that the success of hosting the General Assembly "would be crowned with a mild treatment of the Second Chile Report". For Medina, in a way, these hopes were fulfilled,¹⁴⁵ though Bryce Wood calls the General Assembly in Santiago de Chile a breakthrough for the Commission's work.¹⁴⁶

139 Ibid., pp. 9/10.

140 Washington Post, May 21, 1976, p. A10.

141 US Department of State, Briefing Memorandum, The OAS in Perspective: What Kind of Inter-American Organization?, June 1976, Annex, pp. 11-15 (NSA files).

142 La Opinión, Buenos Aires, May 28, 1976, p. 1. In 1974, Kissinger's Assistant Secretary of State, Robert Ingersoll, advised the Secretary of State to lead the human rights movement in order not to lose control over it. Apparently, with some delay, Kissinger heeded this recommendation. Pflüger, p. 84.

143 Further, a statement by Secretary General, Alejandro Orfila, who called Pinochet after a meeting a "statesman", caused irritations in Mexico. Washington Post, May 25, 1976, p. A16.

144 At the time of the OAS Assembly, 13 of the 24 Member States were governed by military or military controlled regimes.

145 Medina Quiroga, p. 283.

146 Wood, p. 145.

In fact, the OAS Meeting in Santiago was a turning point to an open debate on human rights within the organization. The host government launched the secret IACHR report on Chile to the national daily *El Mercurio*, which surprised the delegates by publishing the entire document and the government's observations during the first week of the OAS Meeting.¹⁴⁷ The leader of the Chilean junta, General Pinochet, opened the Assembly before a banner to commemorate two anniversaries of independence. The first referred to the independence from Spain in 1810, the second to the coup of 1973.¹⁴⁸ Apparently, there was no substantial opposition against this absurd and obstinate view of the government. Pinochet welcomed the Sixth General Assembly, called for a treaty of nonintervention in inner affairs, and referred in his opening speech explicitly to the human rights issue. Likewise, the newly elected Argentine Secretary General of the Organization, Alejandro Orfila, mentioned human rights in his speech, but without taking a clear position.¹⁴⁹ Orfila also joined Pinochet in his criticism of Kissinger's approach towards Latin America, recalling the US Trade Act of 1974 that excluded Venezuela and Ecuador from US trade benefits because of their membership in OPEC.¹⁵⁰ In contrast, the US Secretary of State, Henry Kissinger, gave a remarkable speech on human rights in the Western Hemisphere, in which he delivered the strongest statement against human rights abuses hitherto heard by a representative of an OAS Member State.¹⁵¹ It is remarkable that the convinced realist Kissinger emphasized the belief of the Western Hemisphere that "...human beings are the subjects, not the objects, of public policy." Farer wrote that Pinochet had done Kissinger a favor by ousting the Allende government.¹⁵² Further, Kissinger had been known as a radical pragmatist without particular concern for human rights issues.¹⁵³ However, during his speech Kissinger also stressed

147 Washington Post, June 16, 1976, p. A17.

148 Washington Post, June 5, 1976, p. A12.

149 OEA/Asamblea General, Sexto período de Sesiones, Santiago de Chile, del 4 al 18 de junio de 1976, Actas y Documentos, OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 1, p. 10 (Pinochet), pp. 18/19 (Orfila).

150 Washington Post, June 5, 1976, p. A12; Washington Post, January 12, 1975, B06.

151 Schoultz, p. 131; Time Magazine, August 16, 1976, p. 31.

152 Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988, pp. 87/88.

153 In July 1974, US Ambassador to Chile, David Popper, had discussed issues like torture with the Chilean minister of defense. Subsequently, Kissinger instructed

the importance of the OAS for the United States and called for a reform of the organization.¹⁵⁴ As the Secretary of State was not known as a human rights advocate prior to this point, Schoultz distinguishes between the 'early' and the 'late' Kissinger.¹⁵⁵

Although Kissinger described the human rights situation in Chile with unusually critical words, he focused more on the situation in Cuba. Therefore, there is reason to believe that Kissinger anticipated the double function of an US human rights policy later employed by parts of the Carter administration: to appear with moral authority and to fight Communism at the same time.¹⁵⁶ Furthermore, Kissinger proposed to strengthen the IACHR by enlarging its budget and staff and by allowing it to begin investigations independently instead of depending on complaints brought before it.¹⁵⁷ Observers commented that Kissinger's significant turn was motivated more by congressional pressure than by the Ford administration's true commitment.¹⁵⁸ In addition, several authors suggest that Kissinger told the Chileans not to

Popper to "cut out the political science lectures". See: Lars Schoultz – The Carter Administration and Human Rights in Latin America, in: Margaret E. Crahan – Human Rights and Basic Needs in the Americas, Washington, D.C. 1982, p. 304. Wood, p. 146.

154 US Department of State – Sixth General Assembly of the Organization of American States. Secretary Kissinger: Human Rights, Cooperation for Development, OAS Reform, Santiago, Chile, June 1976, pp. 1-4; 11-13.

155 But Schoultz also points out which were Kissinger's prevailing preferences: "Overall, the message from the Secretary of State to his diplomats was that human rights, while deserving of greater attention, should not distract foreign policy officials from the pursuit of their more traditional national security interests." Or, as Henry Kissinger himself puts it in reference to the Chile case: "I was, after all, Secretary of State, obliged in that capacity to put any particular American interest into the broader context of an overall strategy." Kissinger, p. 755. See William Burr (Ed.) – The Kissinger Tapes. The Top Secret Talks with Beijing and Moscow, New York 1998, p. 221.

156 See: Henry Kissinger – Years of Upheaval, London 1982, p. 413.

157 Washington Post, June 9, 1976, p. A6.

158 Washington Post, June 20, 1976, p. B7; June 27, 1976, p. C6. US Congress pushed the Ford administration to enforce their pressure on the Chilean government also because of the impact of the case of the US citizen Charles Horman, who was killed after the coup. Less than two weeks after the General Assembly in Chile, the famous Amendment 502B that tied US security aid to human rights protection, was passed.

pay too much attention to his human rights speech.¹⁵⁹ If this is true – and there seems to be reason to believe so – it would completely contradict Kissinger’s statements and convert a pronounced statement on behalf of human rights into a blunt hypocritical lip service. In accordance, an OAS document outlines the US strategy to abandon the hemispheric efforts for development by emphasizing human rights.¹⁶⁰

Nevertheless, the Chilean delegation achieved its first success when the General Assembly agreed on adopting Chile’s proposal to discuss the three points referring to human rights jointly as one point.¹⁶¹ The chairman of the Inter-American Commission on Human Rights, Andrés Aguilar, presented the Chilean Report before the First Committee and was interrupted by interventions of the Argentine representative who requested that the former limit his speech to the discussion of the report.¹⁶² Besides a statement on the report by the Chilean delegate, the representatives of Paraguay and Uruguay rhetorically supported Chile’s proposal. The Chilean envoy reiterated the Commission’s lack of keeping in mind foregoing events and criticized that the IACHR’s sources were not impartial. The Paraguayan representative praised Chile’s policy and defended the regime, which in his view had liberated that country from “Marxist-totalitarian barbarity”.¹⁶³ In general, four countries supported the report’s findings: Venezuela, the United States, Trinidad & Tobago, and Barbados. This support

159 Gregorio Selser – *El Documento de Santa Fé, Reagan y los derechos humanos*, Mexico City 1988, p. 91; Forsythe, p. 85. See: Tom J. Farer, *The Grand Strategy*, p. 88.

160 OAS Memorandum, from Francis X. Gannon, to OAS Permanent Representatives and Permanent Observers, Subject: Report on Effect of OAS Activities on the U.S. Press and Public, May 23, 1984, p. 23.

161 Besides the Annual Report, the Chile Report and the new means to promote human rights were the other topics. OEA/Asamblea General, Sexto período de Sesiones, Santiago de Chile, del 4 al 18 de junio de 1976, Actas y Documentos, OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 1, p. 137. Medina Quiroga, p. 283.

162 Unlike the foregoing years, the 1976 Assembly witnessed the IACHR chairman to present the Commission’s reports before the delegations of the Member States. Nevertheless, the General Secretariat had wanted the Commission merely to send an “observer” but this time, unlike the 1975 session, the IACHR insisted on speaking before the General Assembly.

163 OEA/Asamblea General, Sexto período de Sesiones, Santiago de Chile, del 4 al 18 de junio de 1976, Actas y Documentos, OEA/Ser.P/VI.-0.2, 7 julio 1976, Volumen II, Parte 2, Primera Comisión, pp. 156/157/160, 153/154.

marked a significant change in the General Assembly's practice of the handling of the Commission's reports.¹⁶⁴

Besides the Venezuelan support for the Commission, the US representative, Robert E. White, stated that the signing of a multilateral treaty would redefine a State's sovereignty and limit it – a courageous speech against the nonintervention argument. Furthermore, White pointed out that by rejecting the Commission's report Chile had missed an opportunity "to see itself as others see it".¹⁶⁵ The Chilean representative, Minister of Justice Miguel Schweitzer Walters, responded that the US endeavors to cut or suspend military or economic aid to Chile without keeping in mind the events before September 1973 would not represent reality but constitute an echo of the international campaign against Chile.¹⁶⁶ The Paraguayan representative also emphasized that an international campaign would try to blame Chile. In contrast, José María Machín, the Venezuelan representative, clearly presented his and his delegation's belief that it would be dishonest to state that in Chile there were no human rights violations.¹⁶⁷ Following this discussion, two draft resolutions dealing with the Chile Report were presented; Venezuela, the US, Colombia, Costa Rica, and Ecuador sponsored the first. It "...strongly urged the Government of Chile to adopt procedures and measures for effectively preserving and ensuring full respect for human rights in Chile..." and requested a second visit of the IACHR. The second draft resolution, however, sponsored by El Salvador, Grenada, Uruguay, and Paraguay omitted several words to suppress every reference to forced disappearances, and blamed the non-existent procedural standards of the Commission for Chile's suspension of the cooperation with the former. Furthermore, the second draft resolution deleted the request for a new report on

¹⁶⁴ Medina Quiroga, p. 285.

¹⁶⁵ OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 2, Primera Comisión, pp. 163/164 (Venezuela), pp. 178/179 (USA). See Washington Post, June 16, 1976, p. A23. Later on, Kissinger rebuked White's performance as an "excess of his mandate". Eventually, Assistant Secretary of State for Inter-American Affairs, Rogers, saved White's position. Farer – The Great Strategy, p. 88.

¹⁶⁶ OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 2, Primera Comisión, p. 177.

¹⁶⁷ OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 2, Primera Comisión, pp. 188, 189.

Chile and replaced the third operative paragraph with a proposal to the Permanent Council to elaborate a new statute for the Commission.¹⁶⁸

A working group was created to find a middle course. This meant the second success for the Chilean Junta, because the working group's results presented a watering-down of the first draft resolution.¹⁶⁹ Nevertheless, the resolution asked to continue monitoring the human rights situation with special attention to Chile. Finally, the compromise resolution was approved, with a negative vote from Jamaica and abstentions from Brazil and Chile. With the assistance of the Paraguayan and Uruguayan delegations, the Chileans had sought to avoid any resolution on Chile. Finally, the resolution on the Chilean report called the government to continue adopting and implementing necessary measures to preserve and secure effectively the validity of human rights.¹⁷⁰ The Chilean delegation abstained though the resolution had been watered down, which led observers to assume that the resolution was strong enough to force the Chilean representative not to vote for it.¹⁷¹ In contrast, Jamaica explained its negative vote by criticizing the resolution as too weak.¹⁷² Further, Chile's proposal to limit the Commission's competence was refused by the OAS delegations. In short, three resolutions on human rights were adopted: one concerning Chile, the second reaffirmed human rights as one of the main purposes of the organization, and the third dealt with proposals on means to promote the respect of human rights. Members of the IACHR, including its chairman, Andrés Aguilar, judged the resolutions as an important step.¹⁷³

168 OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 2, Primera Comisión, pp. 180.

169 Medina Quiroga, pp. 284/285.

170 AG/RES. (VI-0/76): Segundo Informe de la CIDH "La situación de los derechos humanos en Chile", in: CIDH – Diez años de actividades 1971-1981, Washington, D.C. 1982, pp. 363/364.

171 Washington Post, June 17, 1976, p. A22.

172 Statement of Miss Patricia Durrant, Representative of Jamaica, at the 10th Meeting of the First Committee, 16 June, 1976, in: OEA/Asamblea General, Sexto periodo de Sesiones, Santiago de Chile, del 4 al 18 de junio de 1976, Actas y Documentos, OEA/Ser.P/VI.-0.2, 7 julio 1976, Volume II, Parte 1, pp. 95-99, see also pp. 90/91.

173 Washington Post, June 17, 1976, p. A22. While the General Assembly met in Santiago, the International Monetary Fund voted to approve another \$90 Million loan, despite Chile's concerning human rights record. Washington Post, June 5, 1976, p. A12.

In general, the Assembly was considered a diplomatic and public relations victory for the Chilean government, also due to statements made by participants of the meeting on the peaceful situation in Chile, among those Secretary General Alejandro Orfila and Costa Rican Foreign Minister Gonzalo Facio.¹⁷⁴ Nevertheless, the open discussion of human rights topics contributed to a more influential role of the IACHR and gave it more public attention. Accordingly, the meeting of Santiago converted the Commission into a broadly important but controversial institution. In a short-term perspective, the meeting of Santiago might have been a propaganda triumph for the Chilean government. But nevertheless, the work of the Commission was strengthened by an increase in public interest, which implicitly affected Chile in the years that followed. Also, the IACHR visit and its reports had to compensate for a lack of effectiveness at the United Nations.¹⁷⁵ An UN Mission did not visit Chile until July 1978 – almost five years after the coup.¹⁷⁶ The IACHR had a decisive advantage in comparison with the Working Group of the UN Human Rights Commission: it was perceived more as an intergovernmental body than the UN Commission. Further, the OAS as a regional institution did not include pronounced Socialist governments like the Soviet Union in the UN Group. Moreover, since the assassination of Orlando Letelier, former minister under the Allende government, in downtown Washington, D.C. on September 21, 1976, the United States administrations could not ignore the Chilean case. These elements meant easier access for the OAS Commission to Chile than for the UN body.¹⁷⁷

174 Washington Post, June 16, 1976, p. A17. Orfila's remarks after his visit to the detention camp *Tres Alamos* were harshly criticized since Orfila was accused of having favored the government. Orfila found the conditions "acceptable" but later relativized his comments and admitted that during his visit he had learned about cases of torture in other places. Washington Post, June 22, 1976, p. A16.

175 As a consequence of the first Chile report issued by the IACHR, the UN Human Rights Commission decided to send a working group to Chile.

176 Accordingly, Guest regards the late visit of a UN mission to Chile in 1978 "...as a striking example of the U.N.'s tardiness, even irrelevance." Guest, p. 129.

177 The IACHR's "...regularized procedures and considerable precedents in making on-site evaluations also enabled it to avoid the perception of bias which delayed the work of the United Nations, and prevent the Working Group from making an on-site visit until four years after the Inter-American Commission delivered its first report." Dinah Shelton – Utilization of fact-finding missions to promote and protect human rights: The Chile case, in: Human Rights Law Journal, October 1981, Vol. 2, Parts 1-2, pp. 11, 35. For instance, the Chilean government refused

Unlike the Chilean case, the Commission did not succeed in making public its reports on human rights abuses of the Brazilian military government. At the General Assembly in 1974, the efforts by the IACHR to draw attention to the torture cases in Brazil failed. Apparently, the United States did not want to confront Brazil without a consensus among Latin American governments,¹⁷⁸ but it is likely that the geostrategic importance of the largest South American country also played a role in the considerations of the US.¹⁷⁹ The fact that the Brazilian government did not act as cruel as the regimes in Chile or Argentina is one possible explanation. Heinz states “[t]here was no centrally-planned policy of torture and assassination as in Chile in 1973 and in Argentina in 1976.”¹⁸⁰ According to Wood, the Commission did not publish any Special Report on Brazil because of its limited staff and not due to political considerations.¹⁸¹ There are other basically convincing and reasonable assumptions, which point to an informal agreement not to blame the big and important countries.

In general, the termination of the tacit accord to keep quiet on human rights issues at the meetings of the OAS General Assembly is attributed to a change of US foreign policy towards human rights matters. The technique of the General Assembly to ignore the Commission’s work became “sufficiently notorious” in 1974. In that year, the Committee for Foreign Affairs of the US House of Representatives formally recommended that the State Department propose a strengthening of the IACHR by the OAS General Assembly, including an open debate on findings of the Commission’s reports.¹⁸² Wood con-

to accept any member from a Socialist State in a fact-finding mission of the UN. *Ibid.*, p. 20.

178 See Washington Post, June 2, 1974, pp. L1/L6.

179 “Given this prominent and longstanding role in the 1960’s and 1970’s, the United States was a contributing factor to GHRV [Gross Human Rights Violations] and helped to legitimize the military government internationally.” Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Brazil 1960-1990, in: Wolfgang S. Heinz/Hugo Frühling – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Brazil, Uruguay, Chile, and Argentina 1960-1990, The Hague 1999, p. 215.

180 *Ibid.*, p. 204.

181 Wood, p. 128.

182 House Committee on Foreign Affairs, Report of the Subcommittee on International Organizations and Movements, Human Rights in the World Community: A Call for U.S. Leadership, 93rd Cong., 2nd Session 9 (1974), in: Wood, p. 149, footnote 13.

cludes that in 1975 the State Department acted as if they had not heeded this recommendation but in 1976 the Department of State changed its position.¹⁸³ Since the failure of the General Assembly in 1974 to condemn or even consider the Brazilian cases, several US Congress members and private groups pressured the State Department to guarantee a plain discussion of the Commission report.¹⁸⁴ Diplomacy shifted from 'quiet talks' to a definite observation of human rights at the UN or the OAS.¹⁸⁵ Accordingly, the US pushed the OAS organs to break with its *gentlemen's agreement* not to touch human rights issues in public meetings. Generally, however, the foreign policies of the Nixon and Ford eras in multilateral organizations lacked human rights concerns, with the Chilean case the one outstanding exception.¹⁸⁶ Schoultz also observes a change in mid-1975, when the Ford administration began to focus more on human rights in its foreign policy. Besides the obvious congressional pressure to pay more attention to human rights issues, Schoultz states that "[t]he impetus for this changed rhetoric is uncertain..."¹⁸⁷ The internal circumstances in the United States have to be taken into consideration. The civil rights movement had gained importance and influence on Capitol Hill along with the terrifying experience of the Vietnam War and the Watergate scandal.¹⁸⁸ The result was a perceived morale vacuum.¹⁸⁹ To fill this emptiness with human rights seemed to offer a suitable solution.¹⁹⁰ The switch of the Ford administration to regard human rights as an important factor in US-Latin American relations and Kissinger's speech in Santiago in 1976 might also have been part of a counter-

183 Wood, pp. 130, 131.

184 Washington Post, May 15, 1974, p. A4.

185 Pflüger, p. 57.

186 Schoultz, pp. 128/129.

187 Schoultz, p. 111.

188 Elizabeth Cohn – Human Rights, in: David W. Dent (Ed.) – U.S.-Latin American Policymaking, A Reference Handbook, Westport, Connecticut/London 1995, p. 424.

189 Mark L. Schneider – A New Administration's New Policy: The Rise to Power of Human Rights. In: Peter G. Brown/Douglas MacLean (Eds.) – Human Rights and the U.S. Foreign Policy. Principles and Applications, Lexington/Toronto 1979, p. 8; A. Glenn Mower, Jr. – Human Rights and American Foreign Policy, The Carter and Reagan Experience, from the series: Studies in Human Rights, Number 7, Westport 1987, p. 13.

190 Pflüger, pp. 43, 55.

strategy to put the wind out of the sails of Carter's presidential campaign that had began to focus on human rights.¹⁹¹ Accordingly, this domestic situation in the United States may have led to policy change as well as the broad interest in and the unprecedented international media coverage of the Chilean case. In addition, the US was blamed for having encouraged and actively supported the removal of the Allende government. In this context, its – at least rhetorically – fierce opposition against human rights abuses in Chile could have presented an effort to balance its bad image in the domestic and international public.¹⁹² Further, the US endeavor to focus on human rights violations in Chile could have been a strategy to avert attention from the Brazilian dictatorship. Though the abuses attributed to the Brazilian government were by far not as serious as those by the Chilean regime, it is apparent that the US tried to avoid open criticism of Brazil, most likely due to its geostrategic importance in the region.¹⁹³

On the other hand, it could be assumed that the human rights issue at the OAS constituted a tool for the US to undermine such phenomena as the Third World movement, in which Latin American nations at least rhetorically played an important role. Former Assistant Secretary of State for Inter-American Affairs Rogers, however, tends to marginalize the argument of Latin American solidarity because the only agreement Latin American nations had reached was their desire to confront the US as a block. Beyond that, Roger plausibly states, there has not been a real solidarity among Latin American countries.¹⁹⁴ However, the question remains if this lack of a substantial and

191 Nicolai N. Petro – *The Predicament of Human Rights, The Carter and Reagan Policies*, Volume V, Lanham/London 1983, p. 9; Francis, p. 50. Nevertheless, this argument does not seem very plausible because according to Pflüger, Carter raised the human rights issue relatively late to his main topic during the presidential election campaign. See Pflüger, pp. 101-113.

192 See Lars Schoultz – *The Carter Administration and Human Rights in Latin America*, in: Margaret E. Crahan – *Human Rights and Basic Needs in the Americas*, Washington, D.C. 1982, p. 306.

193 William D. Rogers, Assistant Secretary of State for Inter-American Affairs at that time, stated that in 1975/1976, the US had established a "special relationship" with Brazil. Interview with William D. Rogers, Washington, D.C., November 9, 1999. For the Carter administration's initial approach toward Mexico and Brazil see: Policy Review Committee Meeting, White House, Secret Document, March 24, 1977, pp. 1, 2 (NSA files).

194 Interview with William D. Rogers, Washington, D.C., November 9, 1999.

enduring Latin American solidarity was more the result of historical tensions and problems among the States or also a consequence of US efforts to maintain and accentuate such differences among Latin American countries.¹⁹⁵ Nevertheless, the US could only try to use the tensions in Latin America to its advantage since these had already existed before.

Traditionally, in the type of international crisis the OPEC actions constituted, the US chose between isolationism and unilateral interventionism. In this case, the human rights issue in Latin America indirectly might have served to separate Latin American and Arabian OPEC members (plus Mexico). As the oil price issue affected North-South and especially West-Middle East/Third World relations, the human rights issue promised to appear humanistic while serving as a potential moral weapon against the Soviet Union and as an indirect instrument to dissolve OPEC's unity between Ecuador, Venezuela (and Mexico) and the anti-Israel motivated Arabian members through an alliance in human rights matters in Latin America.¹⁹⁶ Since the strong US-Israel alliance did not allow attempts to openly appease Arab OPEC members, the target of US efforts to combat the risen oil prices shifted to non-Arabian OPEC members. With the emergence of Third World countries as major actors in world politics, the 1970s witnessed a more multipolar international situation that differed from the stagnant East-West bipolar system. This might have encouraged the US to implement more indirect and selective foreign policy measures such as the human rights issue. The advantage of human rights was that it appeased the liberals in Congress and the civil rights movement at home, smoothed down the criticism of the US role in the military coup in Chile, and restored the domestically and internationally damaged image of US foreign policy morality. The obvious shift of Kissinger towards human rights must be considered a major change in the attitude of the State Department. As Kissinger has been known for his strategic brilliance, he might have planned to employ the emerging

195 Accordingly, leftist intellectual Noam Chomsky criticizes US policy on human rights as little more than a propaganda tool. See Jeremy M. Brown – Explaining the Reagan Years in Central America. A World System Perspective, Lanham/London 1995, pp. 208/209.

196 See Washington Post, September 1975, p. A4.

human rights issue for his own means before the topic became inevitable.¹⁹⁷

One could conclude that the human rights issue had the potential to split Latin American countries, since there were some traditional democratic nations like Costa Rica, Colombia, Venezuela, as well as, with numerous limitations, Mexico, and on the other hand open dictatorships especially in the Southern Cone and Central America. This could be interpreted as an attempt by the US to battle the increasing Latin American nationalism¹⁹⁸ at the time, which was in most cases accompanied by traditional resentments against their northern neighbor.¹⁹⁹ Kissinger emphasizes the role of Venezuela, which was considered to be "...in a crucial position between the developed and the Third World."²⁰⁰ It could be concluded that the United States opted to strengthen Venezuela's traditional role of a human rights advocate in order to transform it into a moral ally. This aspired alliance presumably should have caused a decline of the differences between Venezuela and the United States caused by Venezuela's at least rhetorical strong performance in the nonaligned movement, SELA, the Third World Movement, and its membership in OPEC.

While it can be argued that the strengthening of the OAS was a tool for US policies, the OAS seemed to be inclined to disappear or to single out the US. The Ford administration might have thought that existing organs with a potential US dominance would be worth saving.²⁰¹ Likewise, there were tendencies in Latin America to give prior-

197 In his memoirs, Kissinger explains his strategy for the North-South Dialogue in Paris in 1975, which sought to divide the less developed countries by promising gains to the moderate ones. Kissinger, pp. 734/735.

198 See: National Security Study Memorandum No. 173, March 7, 1973, Subject: U.S. Policy Toward Latin America, p. 2 (NSA files).

199 Also see: Tom J. Farer – The United States and the Inter-American System: Are There Functions for the Forms? The American Society of International Law, Studies in Transnational Legal Policy No. 17, Washington, D.C. 1978, pp. 11, 12, 44, 67

200 Kissinger, p. 735. See Washington Post, February 17, 1976, pp. A1/A12.

201 In accordance, before a Subcommittee on Human Rights and International Organizations hearing, former Commissioner Farer stated with regard to the development since the mid-seventies: "Outside the human rights field, to which very little manpower was in fact applied, the OAS was left as an inflated bureaucracy in search of a mission." Geo W. Crockett Jr. – The Role of the Organization of American States in the 1990s, Speech at the Committee on Foreign Affairs (Sub-

ity to issues like economic cooperation – a very sensitive topic for the United States. The human rights issue drew attention to another area and split Latin American governments eager to convert the OAS into a Latin American development agency sponsored by the US.

This conspiracy theory is based on a hypothesis that cannot easily be confirmed. It is clear, however, that the decision of the United States to place more emphasis on the human rights issue in Chile was also derived from domestic politics. These domestic interests were accompanied by the beginning of an international PR campaign to improve the US image towards Latin America, regarding human rights. Moreover, there were strategic goals, among which the battle against the increasing nationalism and Third-World conscience were the main elements. In addition, the survival of the OAS was a goal of US policy that was finally successful.

The Chilean case constitutes without any doubt a historical mark for the inter-American human rights system and in particular for the IACHR. The Commission gained publicity and recognition between 1974 and 1976, but its most prominent phase began when Jimmy Carter became US president in 1977. The new president provided the IACHR with financial, political and diplomatic support and thereby opened the most popular period of the Inter-American Commission on Human Rights.

III. 2. The Carter Administration and the OAS Human Rights Policy

Among the factors that advanced human rights in US President Jimmy Carter's foreign policy were idealistic-moralistic motives, the restoration of US self-confidence, the identification of a "world trend" on behalf of human rights, the stabilization of the alliances with auxiliaries, an ideological offensive towards the USSR, the fortification of the common Western interests, and the domestic political guardianship of détente policy.²⁰² All these goals affected President Carter's human rights policy. The research on Carter's human rights policy,

committee on Human Rights and International Organizations) and Subcommittee on Western Hemisphere Affairs, p. 3.

202 Friedbert Pflüger – Die Menschenrechtspolitik der USA, Amerikanische Außenpolitik zwischen Idealismus und Realismus 1972 – 1982, Munich/Vienna 1983, pp. 129-137.

particularly in Latin America, is divided: The majority of authors concluded that Carter had good intentions, but in practice, his ambitious human rights policy lost its impact.²⁰³ Nevertheless, Petro finds that for some, Carter's human rights policy was "moral imperialism".²⁰⁴ Likewise, Weinstein brings up the alleged cultural imperialism of US human rights policy in Latin America. He acknowledges cultural differences, but also highlights a sort of common heritage regarding shared Western and Christian values.²⁰⁵ In 1978, Noam Chomsky remarked that the US assistance and diplomatic support contributed to human rights violations in the Third World. Further, Chomsky held that human rights only served to improve conditions for US companies in Latin America and that US human rights policy did not ameliorate the human rights situation substantially.²⁰⁶ Soviet author Gvozdev stated that Carter used human rights to consolidate US domination in Latin America, though he could not stop the region's trend toward the non-alignment movement. Further Gvozdev blamed Carter for white-washing dictatorships and choosing to not interfering in countries where the US held interests.²⁰⁷ James Petras' criticized the US human rights policy under Carter since it was selective and did not attempt to change socioeconomic conditions.²⁰⁸ Many authors hold that Carter only selectively endeavored to improve the human rights situation.²⁰⁹ Orrega Vicuña concludes that Carter's human rights policy was not derived from convinced moralism, but out of tactical thoughts,

203 See, for instance, Abraham F. Lowenthal – *Partners in Conflict, The United States and Latin America in the 1990s*. Second, revised edition (1st edition 1987), Baltimore/London 1990, pp. 44-46.

204 Nicolai N. Petro – *The Predicament of Human Rights. The Carter and Reagan Policies, Volume V*, with a preface and introduction by Kenneth W. Thompson, Lanham/New York/London 1983, p. 5.

205 Martin Weinstein – *The United States, The Organization of American States, and Political Repression in the Western Hemisphere*, in: Kaufman Hevener (Ed.), pp. 218, 219.

206 Noam Chomsky – *La administración Carter: mito y realidad*, in: Hugo Assmann (Ed.) – *Carter y la lógica del imperialismo (Tomo I)*, San José, Costa Rica 1978, p. 193.

207 Yuri Gvozdev – *Under the Cover of „Inter-American Solidarity“*, Moscow 1983, p. 28.

208 James Petras – *La “Nueva Moralidad” de Carter y la lógica del imperialismo*, in: Assmann (Ed.), p. 212.

209 For instance, Edward L. Clearly – *The Struggle for Human Rights*, Westport/London 1997, p. 150.

“...merely the product of expediency given the circumstances.”²¹⁰ Farer remarks that despite Carter’s dedication, his style was nonconfrontative, essentially centrist, and always considering US national interests foremost; therefore, the Inter-American Commission on Human Rights appeared to have an intrinsic attraction.²¹¹ For Evans, Carter’s human rights effort was unsuccessful mainly because of its conflict with other foreign policy needs, the impossible reconciliation of the ideological imperatives within human rights, the accusation of a moral imperialism, and the inherent contradiction.²¹² Mower concludes that Carter was not criticized for the lack of pragmatism, but for his policy’s deficit of realism.²¹³ In contrast, Wiarda criticized Carter’s human rights policy as “uninformed, unsophisticated, and undiscriminated.” In addition, he noted that it further accused right-wing regimes and small countries, while sparing left-wing governments and big countries.²¹⁴ Similarly, for the neoconservative, Muravshik, Carter focused “more sharply” on the right-wing than on Communist governments, which helped the latter to pursue their propagandistic aims.²¹⁵ Many opponents criticized Carter for focusing more on right-wing regimes than those of the left-wing – but, conversely, a few critics claimed the opposite. Usually, the fact that Carter’s stand on human rights was criticized either way, by having focused mainly on right-wing or left-wing regimes, has been used as proof of the “even-handedness” of his policy.²¹⁶ Finally, Skidmore states correctly that

210 Francisco Orrega Vicuña – Domestic policies and external influences on the human rights debate in Latin America, in: R. J. Vincent (Ed.) – Foreign policy and human rights, New York/Melbourne 1986, pp. 109/110.

211 Tom Farer – The Grand Strategy of the United States in Latin America, New Brunswick 1988, pp. 91/92.

212 Tony Evans – US Hegemony and the Project of Universal Human Rights, London/New York 1996, p. 170.

213 A. Glenn Mower, Jr. – Human Rights and American Foreign Policy, The Carter and Reagan Experience. In: Studies in Human Rights Number 7, Westport 1987, p. 25.

214 Howard J. Wiarda – The Democratic Revolution in Latin America. History, Politics, and U.S. Policy, New York 1990, pp. 128/129.

215 Joshua Muravshik – The Uncertain Crusade. Jimmy Carter and the Dilemmas of Human Rights Policy, Lanham/New York/London 1986, p. 217.

216 See A. Glenn Mower, Jr. - Human Rights and American Foreign Policy, pp. 44, 46.

Carter's foreign policy generally changed after two idealistic years and moved towards the realism in 1979.²¹⁷

The author will attempt to analyze to which extent Carter's human rights policy towards Latin America, particularly within the OAS, was motivated by altruism and convictions or by strategic ambitions, or if it was by a combination of both.

The previous chapter noted that Congress introduced human rights into the US foreign policy agenda in the early 1970s. Nevertheless, in 1976, the Democratic Party's candidate James Earl Carter elevated the human rights question to a significant level in the US by emphasizing this point during his presidential campaign. The increase in importance of the topic has been explained largely by the need to unify the Democratic Party.²¹⁸ The commitment of the Carter administration can be explained by US internal tendencies, which had led to the Ford administration's strategic move towards human rights. In accordance, the "...loss of moral authority by the Nixon and Ford administrations made promotion of human rights as the soul of a new foreign policy an astute political move."²¹⁹ But since Carter himself was also truly convinced of the issue, his character and his deep religious beliefs have to be taken into consideration as well.²²⁰

Naturally, US policy has not been shaped solely by its presidents' decisions. While Carter preferred the idea of 'US idealism,' his foreign policy crew, Cyrus Vance and Warren Christopher, emphasized the problems and limitations of human rights policy – even Kissinger, a fierce government critic, applauded this approach.²²¹ Furthermore, Carter's National Security Adviser, Zbigniew Brzezinski, emphasized the strategic value of the human rights issue for US foreign policy.

217 David Skidmore – *Revising Course. Carter's Foreign Policy, Domestic Politics, and the Failure of Reform*, Nashville/London 1996, p. 51.

218 Robert A. Strong – *Working in the World. Jimmy Carter and the Making of American Foreign Policy*, Louisiana 2000, p. 72. See Kandy Stroud – *How Jimmy Won. The Victory Campaign From Plains to the White House*, New York 1977; Evans, p. 165; John Dumbrell – *The Carter Presidency. A re-evaluation*, Manchester/NY 1993, p. 20.

219 Margaret E. Crahan – *Human Rights and Basic Needs in the Americas*, Washington, D.C. 1982, p. 2.

220 Zbigniew Brzezinski – *Power and Principle. Memoirs of the National Security Adviser 1977-1981*, London 1983, p. 125. See Dumbrell, p. 20; Pflüger, pp. 92-100.

221 Pflüger, p. 242.

Brzezinski, a committed foe of Communism, argued that a US policy based on human rights would show the benefits of the democratic system to rising Third-World countries, while similarly responding to the Soviet ideological challenge.²²² The human rights topic remained a philanthropic element of US foreign policy for some; whereas others – the decision-makers and critics – thought it to be a tool within the struggle for moral leadership against the USSR.

Carter's inauguration led to new institutional measures. The administration broadened the functions of the Human Rights Office that had been established in 1975, and termed it 'Office of Coordinator for Human Rights and Humanitarian Affairs.' Further, Patricia Derian, a nurse and human rights activist, became the first Assistant Secretary of State for Human Rights and Humanitarian Affairs.²²³ Since Pat Derian was more an activist than a diplomat,²²⁴ she took her new post as a sort of continuous challenge. During her first months in office, she had to fight to acquaint herself with the bureaucratic system and employed a provocative, sometimes shockingly direct conversation style. Wiarda criticizes Derian's blunt diplomacy since her radical statements harmed reformist elements, as exemplified in the Argentine military.²²⁵ In the case of Carter's human rights policy, the State Department's position often countered the policy of the human rights office. The human rights office's human rights policy faced bureaucratic obstacles within the US State Department.²²⁶ In addition, former IACHR member Tom Farer remarks that Carter's endeavors to promote human rights in Latin America was undermined by the CIA and the military ties between the US and Latin American countries. In fact, Carter must have cleaned out the whole Latin American section of the CIA to strengthen his human rights policy in the region.²²⁷

222 Zbigniew Brzezinski – *Power and Principle*, London 1983, p. 124; A. Glenn Mower, Jr. – *Human Rights and American Foreign Policy*, p. 24.

223 Roberta Cohen – *Human Rights Decision-Making in the Executive Branch: Some Proposals for a Coordinated Strategy*. In: Donald P. Kommers/Gilbert D. Loescher (Eds.) – *Human Rights and American Foreign Policy*, Notre Dame/London 1979, p. 233.

224 Interview with Adolfo Pérez Esquivel, Buenos Aires, June 16, 2000.

225 Wiarda, p. 127.

226 A. Glenn Mower, Jr. – *Human Rights and American Foreign Policy*. Elizabeth Cohn – *Human Rights*, in: David W. Dent (Ed.) – *U.S.-Latin American Policy-making, A Reference Handbook*, Westport, Connecticut/London 1995, p. 439.

227 Interview with Dean Tom Farer, Denver/Colorado, August 30, 1999.

Apparently, the US president did not realize the conflict. The human rights bureaucracy often clashed with the traditional inter-American section of the State Department. In particular, in the American Republics Area Bureau (ARA), the regional unit of the State Department for inter-American affairs, a realist view of US relations with Latin America prevailed. In general, the ARA was considered conservative and more interested in maintaining the status quo than invoking a rigid human rights policy.²²⁸ A special commission chaired by the Assistant Secretary of State, Warren Christopher, mediated these conflicts. This 'Interagency Group on Foreign Assistance and Human Rights,' also known as Christopher Committee, furthered the relationship between US aid and human rights records.

After taking office, however, Carter and his advisors had no congruous concept for a coherent human rights foreign policy.²²⁹ The first reports authored by Assistant Secretary of State Derian separated human rights in three categories.²³⁰ In April 1977, Secretary of State Cyrus Vance reiterated the administration's stand on the three categories of human rights espoused by Pat Derian:

- 1) The right to be free from governmental violation of the integrity of the person;
- 2) The right to the fulfillment of such vital needs as food, shelter, health care, and education; and
- 3) The right to enjoy civil and political liberties like freedom of speech, thought, religion, assembly etc.

228 Guest, p. 157. See Pflüger, pp. 230/231. Likewise, Keogh confirmed that the ARA sought the maintenance of good relations with governments, while strongly opposing the work of Derian's Bureau of Human Rights and Humanitarian Affairs. Dermot Keogh – The United States and the coup d'état in El Salvador, 15 October 1979: a case study in American foreign policy perceptions and decision-making, in: Dermot Keogh (Ed.) – Central America. Human Rights and U.S. Foreign Policy, Dublin 1985, p. 25. Also Schoultz comments Todman's performance as a limitation for Carter's policy based on human rights. Lars Schoultz – The Carter Administration and Human Rights in Latin America, in: Margaret E. Crahan – Human Rights and Basic Needs in the Americas, Washington, D.C. 1982, pp. 310/311. See Pflüger, pp. 230/231.

229 Pflüger, p. 142.

230 Iain Guest – Behind the Disappearances. Argentina's Dirty War Against Human Rights and the United Nations, Philadelphia 1990, pp. 155-157.

By naming these three rights, Vance presented a definitive list of priorities for the Carter administration, though he added “[o]ur policy is to promote all these rights.” Obviously, the second human rights generation had been – at least rhetorically – integrated in the new approach of the Carter administration. Furthermore, Vance promised to continue strengthening the Inter-American Commission on Human Rights and proposed regular IACHR visits to all members of the OAS.²³¹ President Carter himself advised his administration to enforce and respect human rights worldwide while considering the different characteristics of various nations and keeping other fundamental US interests in mind. Further, Carter underlined that basic economic and social rights like food, education, shelter or health should be part of the US human rights policy.²³² In hindsight, the reference to socioeconomic rights was merely rhetorical, though at the time, Carter’s true commitment may have been the promotion of those rights as well as individual rights.²³³ On the other hand, the new emphasized economic and social rights is reminiscent of the strategy carried out by the Ford/Kissinger administration: to distract Latin American States from Third World movements and nonaligned solidarity against the United States.

In general, Carter had a special sympathy for Latin America; and unlike his predecessors, he even spoke some Spanish. The new administration reviewed the US policy towards Latin America shortly after Carter’s inauguration. In January 1977, the National Security Council (NSC) sought to find a new approach to improve the North-

231 Speech by Secretary of State Cyrus R. Vance on Law Day before the University of Georgia’s Law School, April 30, 1977, Athens/Georgia. In: Barry M. Rubin/Elizabeth P. Spiro (Eds.) – *Human Rights and U.S. Foreign Policy*, Boulder/Colorado 1979, pp. 218, 221. Carter’s human rights policy within the OAS had already been formulated in the two reports prepared by US diplomat Sol Linowitz (1974, 1976), which recommended to strengthen the OAS and in particular the IACHR. Pflüger, pp. 128, 304.

232 Presidential Directive/NSC-30, from US President James Carter, February 17, 1978, p. 1 (NSA files).

233 Weiss finds that “[i]n practice, however, there is a vast difference in the United States between the importance attached to those rights concerned with the fulfillment of vital needs and those concerned with the integrity of the person and political and civil liberties.” Peter Weiss – *The United States and Recognition of New Human Rights: Economic and Social Needs*, in: Kaufman Hevener (Ed.), p. 125.

South Dialogue. Further, the NSC labeled human rights as one of its six main agenda points.²³⁴ In regards to human rights, the National Security Council proposed to seek bilateral relations while considering the distinctions between degrees of human rights violations and types of government. Also, multilateral organizations like the OAS, the Inter-American Development Bank, the IACHR and the UN Human Rights Commission, as well as nongovernmental entities, were seen as institutions in which US human rights policies should be enforced. In addition, the NSC memorandum referred to the signing and ratification of the American Convention on Human Rights and other conventions.²³⁵ In March 1977, in a Policy Review Committee Meeting, members discussed the question of whether the US should move away from its special relationship with Latin America. Proposals were designed to treat Latin America in an increasing global context as opposed to approaching it with a distinctive regional policy. A special US policy towards Mexico and Brazil was proposed because of particular problems with those countries.²³⁶ Former Assistant Secretary of State for Inter-American Affairs, Terence Todman, referred to the accusation of US intervention on behalf of human rights.²³⁷ Todman, the controversial realist at the head of the ARA, was replaced by Viron Vaky in 1978.

With respect to US relations to military regimes, the White House meeting made the proposal to hold "...warm relations with civilian and democratic governments, normal relations with nonrepressive military regimes, and cool but correct relations with repressive governments."²³⁸ This approach neither specified how a "nonrepressive regime" should be defined nor defined what "correct relations" toward repressive governments meant in practice. In general, the meeting

234 The others were general interests, economic matters, special country problems, the situation in the Caribbean and institutional issues.

235 National Security Council, Presidential Review Memorandum/NSC-17, Subject: Review of U.S. Policy Toward Latin America, Secret Document, pp. 2/3 (NSA files).

236 Warren Christopher, Assistant Secretary of State, advised that the US "...should be increasingly sensitive to Brazil." Policy Review Committee Meeting, White House, Secret Document, March 24, 1977, p. 8 (NSA files).

237 Policy Review Committee Meeting, White House, Secret Document, March 24, 1977, pp. 1-3.

238 Policy Review Committee Meeting, White House, Secret Document, March 24, 1977, p. 5.

agreed on the necessity to distinguish between different kinds of military governments. Obviously, the Brazilian government was seen from a different perspective than the Central American dictatorships or the Chilean regime. The representative of the National Security Council emphasized that the US policy toward democratic and repressive governments in Latin America should be the same as policy towards Africa or Asia.²³⁹ However, within a few months, the National Security Council sought to review US national security interests of its human rights policy, considering aspects like US-Soviet détente, friendly States and allies, and other fields of strategic importance.²⁴⁰ The Committee proposed to define torture and degrading treatment as gross violations, rather than the denial of due process, in order to single out fewer countries, and enable US human rights policy to have some impact.

In March 1977, the US government considered Argentina, Chile, Uruguay and Cuba as the worst human rights offenders, while Nicaragua, Paraguay, El Salvador and Guatemala were receiving “increasing attention.” Moreover, the report of the US National Security Council acknowledged “...a clash between traditional U.S. values (which emphasize the rights of the individual humans above all) and those of Latin America (which subordinate individual rights to the collective good, as expressed by government).”²⁴¹ The NSC document further dealt with the problem that some of the worst human rights abusers were traditional US allies. It expressed some understanding for governments that were actually threatened by guerrilla activities and subversion.²⁴² The report also stated that the US administration had already discussed human rights in private with all governments in the Hemisphere – except Cuba – and expressed “urgent concern” to the ones with the poorest human rights records. Conversely, the document

239 Ibid.

240 National Security Council, Presidential Review Memorandum/NSC-28, May 20, 1977, Confidential Document, p. 2 (NSA files).

241 US Department of State, Action Memorandum, Transmission of PRM/NSC-17 – Review of United States Policy Toward Latin America, March 8, 1977, p. 1 (NSA files). The NSC document attributed a “high public profile” to Brazil but it detected an improving situation in that South American country. Further, Mexico (mistreatment of US drug offenders) and Haiti (refugees) were mentioned.

242 “When a political system sees its basic survival threatened, it is willing to give up anything else—including the goodwill of the U.S.--to win.” Ibid., p. 1.

admitted that clientelism and “conscious or unconscious identification with friendly regimes” constituted internal obstacles to US human rights goals in Latin America. Further, the paper reported the influence of US human rights concerns in countries where the guerrillas had already been defeated.²⁴³ This might lead to the assumption that only human rights violations in countries without an actual guerrilla threat would be targeted by US policy. In addition, the tone of the text is astonishing, for instance: “Several countries have continued abuses long after the threat seems to us to have disappeared.”²⁴⁴ Does this statement imply a justification, or at least a sort of understanding, for human rights abuses committed during times of acute guerrilla menace? If so, the NSC under the Carter administration was much more a protagonist of *Realpolitik* than its conservative critics would have imagined.²⁴⁵

The National Security Council predicted the threat of a formation of a “bloc of conservative countries” which would lead to a divisive dynamic in the Hemisphere.

In regard to the accusations that blamed the US for ignoring the economic rights issue, the NSC document clearly states: “We do not accept the suggestion that the sanctity of the person is less important than economic development.”²⁴⁶ The possible distinction between countries based on their socioeconomic and cultural stage of development was an item as well. The option allowing a distinction between countries, for instance, is meant to expect more commitment to human rights from Chile because of its tradition and internal situation, than from Haiti or Argentina – countries that still faced a reported violent insurgency.²⁴⁷ The option A suggested a rigidly equal treatment of all countries, but was judged as a very difficult option to apply. Interestingly, as mentioned before, Latin America was perceived as the region in which US human rights concerns should be implemented more

243 Ibid., p. 2.

244 Ibid., p. 2.

245 Potentially, the sense of a certain understanding readable between the lines, also suggests a sympathetic attitude by the US concerning governments facing a factual guerrilla threat. So, it indirectly included the possible acceptance of domestic circumstantial relativism.

246 US Department of State, Action Memorandum PRM/NSC-17, p. 2. Emphasis in the original.

247 Ibid., pp. 3/4.

thoroughly as compared to regions without such dependency on the United States.²⁴⁸ The document from the NSC also dealt with a question of priorities: To favor basic human rights regardless of the political system or to emphasize civil rights tied to democratic rule? US Congress and US public obviously advocated a preferential emphasis on basic rights. The advantage of this approach was that the utility of basic rights were opined to “transcend national sovereignty”, which helped to avoid an accusation of an intervention in the sovereignty of other States.²⁴⁹ The memorandum also discussed the question of advancing US human rights goals in Latin America through a multilateral or bilateral approach. The bilateral approach was considered to be faster, more confidential and more effective. In regards to the multilateral option, the NSC paper gave priority to the IACHR, and to a lesser extent to the UN Human Rights Commission. The multilateral approach implied a strategy of cost-savings and the assumption that other countries would join the US in its efforts: “This is especially important in Latin America, where unilateral U.S. “intervention” ranks about as low as torture in the range of mortal sins.”²⁵⁰

This is an example of a first approach of the Carter administration to clarify whether the US had a special relationship with Latin America. In addition, it demonstrates the insecurity and hesitation of the new administration with regard to its Latin America policy. Nevertheless, through the human rights policy of the Carter administration, this relationship became special, indeed.

In general, the majority of Carter’s human rights policy mainly focused on Latin America, even though the US advocated no special relationship towards Latin America and claimed to handle the region like others. According to many authors, the reason for the concentration on Latin America was that it was not perceived as a region of vi-

248 “Under either option, we should be aware of the risk that we will be seen to use muscle in the Americas that we would not dare use elsewhere.” *Ibid.*, p. 4.

249 *Ibid.*, pp. 4/5.

250 *Ibid.*, p. 7, emphasis in the original. See Weinstein, p. 223; Farer – *The Grand Strategy*, pp. 91/92. Former Argentine Foreign Minister Montes states that the Carter administration insisted on on-site investigations of the IACHR because it was sure that the Commission under Aguilar’s leadership would just take into consideration one part and leave out the “other part”. Apparently, Montes refers to violent acts committed by subversives. Interview with Admiral Oscar A. Montes, Foreign Minister 1976-1978, Buenos Aires, May 17, 2000.

tal strategic interest during the 1970s. Only countries which had an important strategic position for the United States – Mexico and Brazil – were singled out. However, Carter's human rights policy in other regions – in Indonesia or China, for example – was less vigorous than in Latin America. In particular, the administration sought to implement its human rights policies through financial aid and international financial institutions. Besides bilateral restrictions on economic aid for governments with a concerning human rights record, the US used its influence with institutions like the Export-Import Bank, OPIC, the World Bank Group and the Inter-American Development Bank.²⁵¹

In Latin America, the reactions on Carter's human rights focus were mixed: While the Venezuelan president Carlos Andrés Pérez welcomed the new approach as one of the best messages the US president could bring to Latin America, the majority of military regimes were understandingly unsympathetic. Besides Venezuela, Costa Rica and Jamaica expressed its support for Carter's policy.²⁵² On the other hand, many of the OAS Member States were discontented following the Carter administration's announcement to link human rights (in regards to US-Latin American relations) by binding US military aid to the human rights situation of each country. Carter suspended military aid for Chile, Uruguay, El Salvador and Guatemala due to their deplorable human rights records. However, the governments of Brazil and Argentina rejected US complaints about human rights violations in their countries and refused US military aid.²⁵³

Although the US was eager to strengthen the OAS, and in particular the Human Rights Commission, the Carter administration initially wanted to reduce the US' contribution to the OAS from two-thirds to one-half. In September 1979, the US government abandoned this en-

251 Schneider, in: Brown/MacLean (Eds.), p. 10. For instance, in 1978, a government committee decided to postpone credits or to vote against loans for Argentina, Chile, El Salvador, Nicaragua and Paraguay. Secretary of State, Washington, D.C., to all American Republic Diplomatic Posts, Subject: ARA Weekly Highlights July 12-19, July 20, 1978, p. 2 (NSA files).

252 Pflüger, pp. 232, 304, 305.

253 Barry M. Rubin – Carter, Human Rights, and U.S. Allies. In: Barry M. Rubin/Elizabeth P. Spiro (Eds.) – Human Rights and U.S. Foreign Policy, Boulder/Colorado 1979, p. 122. Five countries renounced US military aid to express their protest against the "interference in domestic affairs". Washington Post, April 15, 1977, p. A16.

deavor.²⁵⁴ The Carter administration exerted the human rights cause in its foreign policy at the United Nations and the Organization of American States. An interviewee formerly associated with the OAS stated that the US in general used the OAS as a tool, while the Carter administration particularly utilized the IACHR.²⁵⁵ After his first speech before the UN, Carter spoke to the Permanent Council of the OAS: Unlike his predecessors, he did not proclaim a new approach in US-Latin American policies, but underlined the existing problems in inter-American affairs, during which he particularly emphasized his fight against human rights abuses "...of individual freedom, including those caused by political, social and economic injustice." Carter further stressed "[y]ou will find this country eager to stand beside those nations which respect human rights and promote democratic values."²⁵⁶ Accordingly, just as the Ford administration had attempted, Carter tried to favor the remaining civilian governments such as Venezuela, Mexico, Costa Rica, and Colombia. These countries were encouraged by the United States to take position in favor of human rights.²⁵⁷ As an important symbolic act, President Carter signed the American Convention on Human Rights on June 1, 1977. Although the US has never ratified the Convention, Carter's demonstration to break, at least symbolically, with traditional US unilateralism that neglects to become part of binding international treaties, is worthy of mention.

In the following, the author provides examples of the situation at the General Assemblies, as well as the relations between IACHR and individual countries. The question always remains to which extent the Carter administration influenced the IACHR performances and the resolutions on human rights of the OAS General Assembly. In this regard, the most conspicuous cases were El Salvador, Nicaragua, and Panama.²⁵⁸

In 1977, the Seventh Regular Meeting of the General Assembly in Grenada discussed three human rights topics; the Commission's An-

254 See Washington Post, September 16, 1979, p. A15.

255 Interviews.

256 Department of State Bulletin 76, May 9, 1977, p. 454. In: Schoultz, p. 132.

257 Rubin, p. 122.

258 Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988, p. 89.

nual Report, the Special Reports on Chile²⁵⁹ and Cuba – plus various issues like human rights and terrorism. It was an important meeting in relation to human rights because almost three-quarters of the discussion time was spent on human rights, or related topics. This reflected the importance of the subject at that time, but it also showed the emphasis which the Carter administration placed on human rights in the hemisphere. At the Assembly in June 1977, US Secretary of State Cyrus Vance explained the human rights policy of his government towards Latin America.²⁶⁰ Vance emphatically dismissed Kissinger's argument that "...human rights abuses were an unfortunate but necessary by-product of the war against terrorism" and a justification for counter terrorism. Kissinger, Vance's predecessor, had taken this stand in his early years as Secretary of State.²⁶¹ At this General Assembly in Grenada, the US supported the approval of a resolution that stated that no circumstances would justify torture, summary executions, or prolonged detentions without a fair trial.²⁶² This clearly was directed against circumstantial relativism in Latin America and constituted a step towards refraining from the former US human rights *Realpolitik*. Furthermore, Vance met with almost all foreign ministers and reinforced the US desire to implement its human rights policy and to condition economic and military aid on human rights records. In human rights matters, this meant a significant move beyond the policies of former administrations. Schoultz suggests that apart from the initial endeavors in 1977, multilateral diplomacy through the OAS did not turn into a leading instrument for US human rights policy.²⁶³ The author disagrees with this judgment because the US fiercely supported the Inter-American Commission on Human Rights financially, diplo-

259 As the report in its entirety, also the recommendations of the Third Report on Chile were similar to those of foregoing reports. It is to stress that the Commission used to mention all abuses already contained in former reports, which were not clarified to a satisfactory extent. The Third Chile Report was approved unanimously on February 11, 1977. Medina Quiroga, pp. 287-289.

260 Washington Post, June 16, 1977, p. A20; June 18, 1977, p. A12.

261 Schoultz, pp. 115/116.

262 AG/RES. 315 (VII-0/77). The resolution was adopted by 14 Member States. No State voted against it. Argentina, Brazil, Colombia, Chile, El Salvador, Guatemala, Paraguay and Uruguay abstained, while the representatives of Bolivia, Guatemala and Nicaragua were absent. Schoultz, pp. 132/133 and p. 133, Footnote 50; Gómez, p. 193.

263 Schoultz, p. 133.

matically and, most importantly, politically.²⁶⁴ Though the financial strengthening and diplomatic assistance could be considered an unilateral action, the political support for the Commission enabled it to act freely.²⁶⁵

The mood created by the US support for the IACHR encouraged democratic States – Costa Rica, Venezuela, Colombia and, with certain limitations, Mexico – to express their support for or to continue to advocate the Commission at OAS meetings.²⁶⁶ On the other hand, US pressure on bilateral loans and those by international finance institutions for repressive regimes might have been more important because those touched a sensitive area: financial resources. But these endeavors also made the Carter administration's stand on human rights in international affairs vulnerable because it repeatedly provoked criticism concerning a new type of US imperialism.²⁶⁷ However, in fact, new US legislation tied to human rights records attributed the IACHR an arbitrary function.

At the 1977 OAS Assembly, the chairman of the IACHR, Andrés Aguilar, presented the Report on Chile before the First Committee without additions and the Chilean representative argued similarly to his government's observations. Aguilar also mentioned economic, social and cultural rights but simultaneously underlined that the Commission was obliged by its statute to give priority to the classic "basic rights".²⁶⁸ This position was not new; it just represented the prevailing opinion regarding the priority between individual and socioeconomic rights, which had dominated the Commission's performance since its creation. The Chilean representative, Sergio Diez, saw an improve-

264 See Hertrampf, pp. 24/25.

265 See Tom J. Farer – *The Grand Strategy*, pp. 91/92.

266 Woods finds that at the Assembly in Grenada, the IACHR enjoyed support by thirteen delegations: Barbados, Costa Rica, Dominican Republic, Ecuador, Haiti, Jamaica, Mexico, Panama, Peru, Suriname, Trinidad & Tobago, the US and Venezuela. Wood, p. 146.

267 Christoph Müller – *Die Menschenrechte als außenpolitisches Ziel. Das Beispiel der amerikanischen Politik der Jahre 1973-1980*, from the series: *Völkerrecht und Außenpolitik*, Vol. 37, also Diss., 1984, Baden-Baden/Germany 1986, p. 13.

268 He explained that the IACHR primarily defended individual rights because it was its task to do so, not because the Commission disliked economic, social and cultural rights. OEA/Asamblea General, Séptimo Período Ordinario de Sesiones, St. George's, Grenada, del 14 al 22 de junio de 1977, OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, pp. 68/69.

ment of the human rights situation in his country and stated that it was easy to blame a government with the “game of the disappeared.”²⁶⁹ At the same time, Diez reiterated his government’s criticism on the perceived international campaign against Chile, while he justified the restrictions of human rights with the need to defend the country against terrorism. The Chilean delegate lamented that the Commission would not keep these circumstances in mind while preparing its reports.²⁷⁰ By employing this argument, the Chilean representative again presented a discourse that the author earlier defined as circumstantial relativism.²⁷¹

Finally, the Venezuelan, José María Machín defended the IACHR, denying its assumed protection for terrorism and pronounced the moral concept of a State’s conduct against internal opposition by stating: “One cannot fight terrorism and violence with counter terrorism and counter violence because this would mean to fall into the same territory, which we are condemning.”²⁷²

The Third Report on Chile as well as the Annual Report of the IACHR were approved by the General Assembly without observations. Nevertheless, the approved resolution did not request the IACHR to prepare a new report on Chile.²⁷³

269 OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, pp. 182, pp. 187.

270 Medina Quiroga, p. 289.

271 Diez also complained that the report had been published in a Venezuelan newspaper before its official release. OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, p. 189.

272 “Al terrorismo y a la violencia no se le puede combatir con el contraterrorismo o con la contraviolencia, porque sería caer en el mismo terreno que estamos condenando.” OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, p. 206.

273 AG/RES. 313 (VII-0/77) “Tercer Informe sobre la situación de los derechos humanos en Chile.” Medina Quiroga, p. 290. In 1978, the Carter administration was relieved that Cuba and Yugoslavia withdrew their support for the resolution on Chile by the UN Human Rights Commission. Especially the question whether to take note of the IACHR report on Chile was a crucial point of Cuba’s discontent because the Cuban government interpreted it as implicitly expressing support for the OAS. Secretary of State, Washington D.C., Info all Diplomatic Posts, Subject: UNCHR, 34th Human Rights Commission – Positive Balance Sheet, March 20, 1978, p. 3 (NSA files). This example shows that at a diplomatic level human rights played an important role.

IACHR chairman Aguilar also reported on the human rights situation in Uruguay.²⁷⁴ The Uruguayan representative, Alvaro Alvarez responded, requesting a “depolitization” of international human rights protection and urged not to protect Communism with the human rights issue. Alvarez focused on the reaction to human rights violations in Cuba and found that nobody seemed to be worried about the abuses committed by the Castro regime. This led the Uruguayan delegate to speak of a “theory of selectivity in the human rights sector.” Here, the Commission’s institutional necessity to report on the situation in Cuba becomes obvious. Furthermore, Alvarez complained that the IACHR had hired an independent individual, Robert K. Goldman²⁷⁵, because he did not belong to the organization.²⁷⁶ Alvarez also denounced that the IACHR had never announced its intention to prepare a Special Report on Uruguay and that it had never formally asked for permission to conduct an on-site observation. Finally, the Uruguayan representative underlined the “democratic tradition” in his country, whereby he expected mutual respect between the State and the IACHR.²⁷⁷ Andrés Aguilar intervened by responding to the complaints about the lack of mention of terrorist acts of violence in the Commission’s reports. He asked the present representatives, who would be those to turn to for information on the abuses, and gave a polemic suggestion: The terrorist organizations? This argument was repeated by the IACHR various times, but the concerned governments still used this complaint to attack the Commission’s supposed partiality.²⁷⁸

274 Many voices in the United States urged the Commission to visit Uruguay, particularly in 1977. Among those were the Council on Hemispheric Affairs, the US Senate Committee on Foreign Relations, the human rights NGO Washington Office on Latin America and individual US Senate members (IACHR files).

275 In the 1990s, former human rights activist and law professor Robert Kogod Goldman, a US citizen, became a distinguished member and chairman of the IACHR.

276 Reportedly, the final report was not as harsh as his first version, containing three volumes, was. Interviews.

277 OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, pp. 78-92, 104/111/120/127/129. Keeping in mind the atrocities committed by the Argentine armed forces in power at that time, the Argentine representative, Juan Carlos Arlia, proved his sense for bad taste by naming the continuation of the four-hour discussion on basic rights a “frank violation of human rights of those present”. *Ibid.*, p. 152.

278 Further, Aguilar pointed out that contracts within the OAS – like the one between the Commission and Robert Goldman – had previously to be seen and accepted

During the discussion of the IACHR's report on Cuba, many Member States, at least rhetorically, supported a re-integration of Cuba into the inter-American system. The US representative defended the actions of the Commission because the State of Cuba, not the current government, had signed the inter-American agreements supported by the IACHR.²⁷⁹ Surprisingly, right-wing governments avowed support for Cuba's re-integration into the inter-American system or refused to accept the jurisdiction of the OAS to criticize Cuba's human rights record. This might have been a strategy to solidarize left- and right-wing fractions in the OAS against the United States and its human rights policy. But moreover, this behavior presumably also represented a typical Latin American attitude. At times, Europeans and North Americans have problems to understand friendly relations between authoritarian rulers of opposite ideologies in Latin America. One attempt to explain why right-wing dictatorships spoke on behalf of Cuba's Fidel Castro is to focus on the basic, universal anti-US patterns in the region.²⁸⁰

Argentina presented a draft resolution, which sought to justify government's restrictions on human rights during their battle against terrorism.²⁸¹ Institutionally, such a resolution would have displayed an official declaration of the main argument of the prevailing circumstantial relativism – to temporarily suspend basic rights in order to challenge subversive enemies. Eventually, the Argentine proposal was supported by the Salvadoran delegation. In the end, the project was defeated; though it obtained eleven votes in its favor, four abstentions and only six against.²⁸² Beforehand, the representatives of Venezuela and Mexico had argued that the most appropriate solution for such kind of terrorist threats would be political freedom. Also, both delegations defended the Commission's position, which did not permit any

by the General Secretariat of the Organization. OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, pp. 139, 142/143.

279 OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, pp. 265, 268.

280 The close relations between Spanish right-wing dictator General Francisco Franco and Cuba's Socialist *máximo líder*, Fidel Castro, might be considered within the context of the willingly cited Iberian tradition of authoritarianism.

281 Medina Quiroga, p. 290, footnote 167. Wood, p. 115.

282 According to article 86 of the Rules of Procedure of the General Assembly, it would have needed the majority of votes. Medina Quiroga, p. 290, footnote 167.

justification for States to employ the same methods as those used by terrorists.²⁸³

In general, representatives of military governments used to emphasize the close relationship between human rights and terrorism. Therefore, many delegates tried to combine both topics in order to water down the State obligations concerning human rights – the author tends to describe this tactic as a diplomatic variant to successfully forwarding the circumstantial relativist argument. Venezuela opposed such attempts to human rights and terrorism in a resolution.²⁸⁴ In contrast, the Chilean delegate reiterated his view showing a close connection between both topics and named some independent institutions “totalitarian façade organizations” because they were based in Socialist countries.²⁸⁵

On the other hand, the US representative, Robert White, together with the delegations of Venezuela, Costa Rica, and the Dominican Republic, proposed a project to financially strengthen the IACHR.²⁸⁶ Finally, as shown in chapter II. 2., they succeeded. Furthermore, Venezuela emphasized the Peruvian observation that there were three situations within the member states: first, countries with terrorism and without human rights violations; second, countries with human rights violations and without terrorism and third, countries with both. Accordingly, the Venezuelan delegate strongly insisted on a distinction between terrorism and human rights. Notwithstanding, the Costa Rican representative, Navas, expressed that his government considered organized terrorism as a form of political violence as one of the most repugnant forms of human rights violations.²⁸⁷ At the end of the discussion, it became obvious that Argentina, Chile and Uruguay unified as a common front against the IACHR. According to Medina this ex-

283 Wood, p. 136. Costa Rica presented a project, which would have reduced the number of ratifications necessary for the American Convention on Human Rights to enter into effect from eleven to seven – without success. OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, p. 157.

284 Ibid., p. 316.

285 Ibid., pp. 316, 330.

286 OEA/Ser.P/VII-0.2, 30 diciembre 1977, Volumen II, Segunda Parte, Comisión Primera, p. 164.

287 Ibid., pp. 333, 334.

plains that the draft resolution, agreed on in a working group, was easier on Chile than in the previous year.²⁸⁸

Higher than the US human rights policy toward Latin America, the signing of the Panama Canal Treaties in 1977 was a top priority in Carter's foreign policy agenda.²⁸⁹ The treaties included the handing over of the Canal to Panama, which had been constructed and controlled by the United States since 1903. Eventually, the treaties entered into force and in 2000 the US gave the Canal authority back to Panama.

In 1977, the signing of the Panama Canal treaties at the OAS headquarters in Washington, D.C. provoked demonstrations due to the fact that the majority of the invited heads of Latin American States attending the signing ceremony represented military regimes – including Panamanian president General Omar Torrijos. For Mower, the Panamanian case constituted an exception of Carter's human rights policy because in the dialectic between realism and moralism, the administration's synthesis was to back Torrijos in order to conclude the Canal Treaties.²⁹⁰ Likewise, Schoultz considered the presence of heads of dictatorships in Washington as a black mark on Carter's human rights policy.²⁹¹ Publicly, Carter defended the attendance of repressive regimes by noting that his strategy was to pursue an advancement of human rights through persuasion and dialogue, rather than by ignorance. In private, the US president knowledgeably discussed the human rights situation in each country with its respective head of State, including Chile's General Pinochet and Argentina's president Videla. Carter and Vance directly urged the leaders to invite the IACHR and to grant it all available sources and liberties.²⁹² Furthermore, the gathering in Washington beseeched several Member States to sign or ratify the American Convention.²⁹³ This shows that Carter successfully em-

288 Medina Quiroga, p. 290.

289 United States. National Security Council, Policy Review Committee, PRM/NSC 1, 01/21/1977, Subject, SECRET, January 21, 1977 (NSA files).

290 A. Glenn Mower, Jr. – Human Rights and American Foreign Policy, p. 30.

291 Lars Schoultz – The Carter Administration and Human Rights in Latin America, in: Margaret E. Crahan – Human Rights and Basic Needs in the Americas, Washington, D.C. 1982, p. 310.

292 Washington Post, September 8, 1977, p. A16; Interview with Admiral Oscar A. Montes, Foreign Minister 1976-1978, Buenos Aires, May 17, 2000.

293 Müller, p. 88. Interviews.

ployed the sort of ‘quiet diplomacy’ praised by his Republican predecessors and successors. However, in the United States, there was a predominantly conservative opposition – including Ronald Reagan, who called Torrijos a “tinhorn Marxist dictator”²⁹⁴ – against the treaties because the Canal was considered US American property and extremely necessary to guarantee US national security in the region.²⁹⁵

The US opposition against the Panama Canal treaties named Panama’s government a dictatorship and called Carter’s human rights policy inconsistent since he had negotiated with Torrijos. However, several international human rights groups did not judge the situation in Panama as poorly as portrayed by treaty opponents in the US. Nevertheless, the treaty antagonists accused General Torrijos of widespread human rights violations in order to impede the treaties’ ratification in Congress. Therefore, a week after the signing of the Panama Canal treaties, Panama’s president Torrijos invited the IACHR to conduct an on-site observation in his country. Torrijos declared: “I will give you the keys to the jails. If you find any political prisoners, I will set them free.” Further, he expected that the Commission’s role would not only be to investigate the alleged violations but also to “refute the unfounded charges”.²⁹⁶ So, the Panamanian president sought to counter attacks against US president Carter and to deliver a positive message to US Senate; one that had to deliberate over the treaties potential ratification. According to Farer, it was Carter’s security adviser Zbigniew Brzezinski who inspired Torrijos’ invitation to the IACHR.²⁹⁷ Farer

294 Reagan on the Canal: “When it comes to the canal, we built it, we paid for it, it’s ours, and we should tell Torrijos and company that we are going to keep it...” Cited as in Peter G. Bourne – Jimmy Carter, *A Comprehensive Biography from Plains to Postpresidency*, New York 1997, p. 393.

295 See: Hearings Before the Committee on Foreign Relations, United States Senate, Ninety-Fifth Congress, First Session on Executive N, 95th Cong., 1st session, October 10, 11, 12, 13, and 14, 1977; Part 3, Public Witnesses. Timothy Stater – Climax: Senate Ratification, 1977-1978, in: G. Harvey Summ/Tom Kelly (Eds.) – *The Good Neighbors: America, Panama, and the 1977 Canal Treaties*, Athens/Ohio 1988, pp. 78/79.

296 Cablegram from General Omar Torrijos Herrera to the IACHR, Panama, September 13, 1977 (IACHR files).

297 Tom J. Farer – *The Grand Strategy of the United States in Latin America*, New Brunswick 1988, p. 90; Tom Farer – *The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox*, in: Harris/Livingstone, p. 50. Apparently, the Carter administration considered the Torrijos regime generally not as a bad human rights violator. US National Security Council, Subject:

points out that Panama's invitation to conduct an investigation was not welcomed by the IACHR at that time²⁹⁸, most probably due to more urgent cases. An IACHR institutional advantage stemmed from Torrijos' readiness to accept the Commission's new regulations pertaining to on-site observations since the Panama visit constituted a precedent case.²⁹⁹

The IACHR Special Commission, which conducted the on-site investigation in Panama, was composed of chairman Andrés Aguilar, Tom Farer and Fernando Volio Jiménez. The staff lawyers Roberto Alvarez, Robert E. Norris and Charles Moyer supported the Commissioners. It is interesting that the Special Commission deployed three US citizens and that the overwhelming majority of the members and lawyers of the Commission were considered 'progressive'. Could there have been influence from the Carter administration to guarantee a 'favorable' report in order to secure the Canal Treaties? The author does not think so, because the 'progressive' members always were eager to find and accuse abuses so they would have been a factor of insecurity for US interests with respect to the Canal Treaty. On the other hand, the US had special influence on the Commission at that time – at least indirectly through its financial founding. These thoughts warrant a reconsideration of the Panama visit, above all, due to the astonishing number of US citizen participants. Before the report was finished, the Mexican Commissioner, Gabino Fraga, expressed several concerns regarding the document. One, among others, was that it did not present a report on the on-site observation.³⁰⁰ Objections like these led to postponements of the report's transmittal to the General Assembly, which increased the already high expectations of the US Senate.³⁰¹ Whatsoever, the Commission's report concluded that the human

Presidential Review Memorandum, January 26, 1977 (NSA files). However, in the cited memorandum, almost two entire pages dealing with Torrijos' government are blacked out.

298 Farer, in: Harris/Livingstone (Eds.), p. 50.

299 Ibid., p. 51.

300 IACHR files.

301 See, for instance, Letter from Richard (Dick) Stone, US Senate, to Edmundo Vargas Carreño, Washington, D.C., February 10, 1978. Stone wanted to see the report on Panama and considered it particularly important for the US debate on the Panama Canal. Vargas Carreño, however, responded that the document was not done yet and would not be ready in the next future. Further, results would not be distributed. So, did the IACHR want to avoid the role of a referee within the

rights situation in Panama had significantly improved between 1972 and 1977, though some abuses remained. The conclusions of the Special Report explicitly stated that the IACHR could not confirm “systematic violations of fundamental rights” – a clear message to the Canal Treaty opposition in the US.³⁰² This remark was unprecedented, and presumably superfluous, considering the Commission’s expected impartial position. The US Senate finally ratified the treaties in spring 1978 and the report came out that summer. Correspondingly, the report was not expected and actually did not have much impact on US public. In general terms, however, it was not the IACHR’s task to verify or falsify the accusations of US politicians opposed to the Panama Canal Treaties. One might ask if the omission of the aforementioned phrase would have made a difference. It surely would have given the report a different tone and general character. Furthermore, the argument arises whether it even was the Commission’s mandate to inform the public on its findings since the Panamanian case enjoyed much attention, particularly in the US. In other words, the inclusion of the sentence could be interpreted as the IACHR’s duty to serve a ‘public interest’. However, the author does not share this view, because it was the Commission’s main task to promote and observe human rights in the Member States, not to act as a public relations agency. Though dissemination counted as one of its objectives, it was not the Commission’s responsibility to state an obvious message on what did *not* happen in a particular country to the public or even decision-makers in another Member State.³⁰³ Farer remarks that if the Carter administration had placed more emphasis on the effect of the Panama report, the Commission would have had more impact, although this did not happen.³⁰⁴ Nevertheless, this example shows that in general, US policy at times had notable impact on the IACHR.

Canal treaty controversy? Letter from Edmundo Vargas Carreño, to Richard Stone, Washington, D.C., March 6, 1978 (IACHR files).

302 “Information at the command of the Commission, nevertheless, does not go so far as to present a picture of systematic violations of fundamental rights.” Report on the situation of human rights in Panama, OEA/Ser.L/V/II.44 doc.38, rev. 1, 22 June 1978, Original: Spanish, p. 114.

303 See Farer, in: Harris/Livingston (Eds.), p. 50. This criticism is further reasonable due to the assumption that the US government convinced Torrijos to request a Commission investigation.

304 Tom J. Farer – *The Grand Strategy*, pp. 90/91.

In early 1978, the OAS Member States refused Uruguay's invitation to hold the General Assembly in Montevideo. Unlike the decision in 1976, the US emphasized its stand on human rights. However, twelve countries voted for a meeting in Uruguay, only one vote short of the majority needed.³⁰⁵ The Eighth General Assembly of the OAS in June 1978, which eventually took place in Washington, D.C., might have suited Carter's desire to re-emphasize – at least rhetorically – his human rights policy in the region. In the preceding months, his administration had been criticized for abandoning its strong focus on human rights that had begun in early 1977.³⁰⁶ The representatives of governments with questionable human rights records had become accustomed to diplomatically arguing against the Commission's findings. First, the delegates of the attacked governments expressed their general support and their honor to cooperate with the IACHR, but then they mentioned their differences with the Commission.³⁰⁷ In reality, there were enormous discrepancies between the Commission's opinions and those of the accused governments'. Besides typical diplomatic rhetoric, the verbal prudence from envoys of repressive Latin American governments must have been attributed to Carter's strong stand on human rights in the region and certainly to the general respect toward intergovernmental institutions like the OAS.

Paraguay's representative, Luis María Argaña, argued that by condemning terrorism, his government was indirectly protecting human rights. The IACHR's chairman, Aguilar, deplored this statement because he had hoped to advance the relation between Paraguay and the Commission.³⁰⁸ High emotions and mutual fist shaking reportedly accompanied the controversy between Argaña and Aguilar.³⁰⁹ In re-

305 Washington Post, February 3, 1978, p. A23. Pastor finds that in this case, the Venezuelan-US relations paid off because both countries jointly pursued to prevent an OAS meeting in Montevideo. Robert A. Pastor – Whirlpool. U.S. Foreign Policy Toward Latin America and the Caribbean, Princeton, New Jersey 1992, p. 49. Nevertheless, in June 1977, the 15th Pan American Child Congress gathered in Montevideo.

306 Washington Post, June 22, 1978, p. A2.

307 See, for instance, OEA/Asamblea General, Octavo Período de Sesiones, Washington, D.C., del 21 de junio al 1° de julio de 1978, OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Vol. II, Parte II, Primera Comisión, pp. 71.

308 OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Vol. II, Parte II, Primera Comisión, pp. 90, 94.

309 Washington Post, July 1, 1978, p. A13.

gards to the Commission's report on Uruguay, the delegate of the concerned country, Giambruno, said that human rights had to be dealt with within each country. Nevertheless, the critical IACHR reports on Paraguay³¹⁰ and Uruguay³¹¹ were not based on on-site observations and were approved with 16 votes in favor, one against and eight abstentions by the military regimes.³¹² The US delegate, Irving G. Tragen, supported the IACHR and its reports.³¹³

The agenda point "Promotion of human rights" led to a resolution that endeavored for economic and social justice to preserve the human dignity and liberty of the individual as stated in the American Convention on Human Rights. Further, the resolution reiterated that there were no conditions that justify torture, summary executions or extended detentions.³¹⁴ The resolution was adopted by 21 votes with no negative vote and three abstentions by Brazil, Argentina and Uruguay.³¹⁵ When the transition of the IACHR – due to the entry-into-force of the Convention – was discussed, the Uruguayan delegation stressed that the OAS Members that were not part of the Pact of San José should be considered under the Charter and not under the Statute and Regulations of the Commission.³¹⁶ This would have placed less emphasis on human rights and more significance to the nonintervention argument, or concretely less competence for the IACHR and

310 AG/RES. 370 (VIII-0/78), in: Comisión Interamericana de Derechos Humanos – Diez años de actividades 1971-1981, Washington, D.C. 1982, pp. 368-369.

311 AG/RES. 369 (VIII-0/78), in: Comisión Interamericana de Derechos Humanos – Diez años de actividades 1971-1981, Washington, D.C. 1982, pp. 366-367.

312 OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Vol. II, Parte II, Primera Comisión, p. 142. Those governments that abstained were Argentina, Bolivia, Brazil, Chile, El Salvador, Haiti, and Nicaragua. Paraguay abstained with the Uruguayan report while Uruguay voted negative. In the Paraguayan case, Uruguay abstained and Paraguay voted "no".

313 OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Vol. II, Parte II, Primera Comisión, p. 127.

314 OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Vol. II, Parte II, Primera Comisión, pp. 151, 152.

315 The resolution was criticized by the Brazilian representative, Alarico Silveira, who rejected the interference of international bodies in domestic affairs. OEA/Ser.P/VIII.0.2., 30 diciembre 1978, Volumen II, Parte I, Sesión Plenaria, p. 261.

316 OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Vol. II, Parte II, Primera Comisión, pp. 160/161.

more emphasis on national sovereignty. Despite the arguments, the Uruguayan proposal did not succeed.

The US delegation perceived the treatment of the terrorism agenda item in the First Committee as an “ill-humored debate”. The Jamaican representative argued against the condemnation of terrorism in the resolution since he saw it more as “people struggling against instrumentalities of oppression”, comparable to the situation in South Africa.³¹⁷ Together with Suriname, Jamaica presented an amendment that sought to smooth the language of the draft resolution by placing the terrorism issue in the “Whereas” clause. However, despite the US backing, the proposal reportedly was “abstained to death”.³¹⁸

Again, the Annual Report of the Inter-American Commission on Human Rights was adopted with 21 votes, no abstentions and negative votes by Argentina, Brazil and Uruguay. The adopted resolution called on the Chilean government to continue implementing measures to preserve human rights and to cooperate with the IACHR. Moreover, the resolution requested the Inter-American Juridical Committee to prepare a draft convention that condemned torture as an international crime.³¹⁹

The voting behavior at the General Assemblies clearly demonstrates that the military governments voted *en bloc*. If the respective delegations considered a resolution as satisfyingly moderate, they abstained instead of voting against it. Likewise, William D. Rogers, Assistant Secretary of State for Inter-American Affairs (1974-77) acknowledged that there was a faction of countries – above all the military regimes in the Southern Cone – that opposed fierce resolutions on behalf of human rights.³²⁰ Apparently, the diplomatic corps of Argentina, Brazil and Uruguay were the most restrictive in terms of their voting behavior. On the other hand, besides the heated debate on the

317 Secretary of State, Washington, D.C., to all American Republic Diplomatic Posts Priority, Info RUDCT/AMEmbassy London Priority 6818, Subject: OASGA Summary: July 1, 1978; July 3, 1978, p. 1 (NSA files).

318 Ibid.

319 Ibid., p. 3.

320 Interview with William D. Rogers, Washington, D.C., November 9, 1999. Rogers mentioned the countries with the worst human rights record: Argentina, Chile, Paraguay and Uruguay. He also stated that the Brazilian military regime had always been more aloof about the OAS but that its human rights record by far was not as bad as those of other dictatorships in South America were. See Kissinger, pp. 740/743.

Paraguayan report, the behavior of the delegations from Argentina, Uruguay and Chile was markedly toned down. In particular, Uruguay and Chile preferred to underline the progress made in the field of human rights than to battle against the Commission's findings as they had done in the preceding years. Argentina also did not dare protest loudly against the Commission's accusations and finally invited the IACHR to undertake an on-site observation.³²¹ This behavior can be interpreted as a result of Carter's strong and noticeable support for the Commission since it seemed to be useless or even harmful to criticize the human rights organ fundamentally, or at least in public.

Shortly after the signing of the Panama Canal Treaties, the government of El Salvador invited the IACHR to visit the country – clearly a result of Carter's talks with Latin American heads of State during their visit to Washington, D.C.³²² For almost five decades in El Salvador, the armed forces ruled the country in a strategic alliance with the powerful agrarian oligarchy. Repression of disobedient peasants was the order of the day in the 1970s when social and political polarization climaxed. Real and presumed leftists and an increasing number of members of the Catholic Church became victims of State terror and business elite-sponsored death squad activities.³²³ The Special Committee of the IACHR sent to El Salvador consisted of vice chairman Dunshee de Abranches, Volio Jiménez and Farer. The on-site visit took place between January 9 and 18, 1978.³²⁴ According to Farer, Commissioner Dunshee de Abranches arrived first in El Salvador and “allowed himself to be photographed, smiling, with the president.” However, the mood changed when Volio and Farer came to that country. Dunshee prepared a draft report, which Farer described as “disgraceful”. Subsequently, Volio and Farer rewrote the text and forged ahead with it despite Dunshee's resistance. Finally the Commission adopted a very strong Special Report on El Salvador's human

321 Washington Post, July 1, 1978, p. A13.

322 Washington Post, September 15, 1977, p. A20; Farer – The Grand Strategy, p. 91. Interviews.

323 For a brief historical overview, see chapter IV. 2.

324 IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, OEA/Ser.L/V/II.47 doc. 13 rev. 1, 29 June 1979, Original: Spanish, p. 111.

rights situation clearly condemning the government of General Carlos Humberto Romero.³²⁵

First, an obviously unsuited lawyer who later had to leave the IACHR Secretariat prepared the preliminary version of the Report on the situation of human rights in El Salvador. Due to his imperfect work, the report had to be rewritten.³²⁶ This internal problem within the IACHR Secretariat must also have caused the delay of the Special Report's transmittal to the Permanent Council and the General Assembly. Another potential reason for the report transmittal's hold-up was an internal discussion surrounding the Commission's general approach toward the preparation of publications like Special Reports.³²⁷ Farer points out that it would have been possible to publish the report and attach observations and denials of the Salvadoran government. Since Special Reports must be approved by an absolute majority of the IACHR, the Commissioners had to long for a solution. Eventually, the progressive faction within the Commission won and the Report on El Salvador, and subsequent ones, were published without government-provided annexes.³²⁸ Apparently, this internal debate on the objections of the Salvadoran government caused a delay in handing over the final document.³²⁹ Usually, the report would have been discussed at the General Assembly in 1978. The fact that a military coup ousted the accused Romero regime in 1979 clearly diminished the report's

325 Interview with Tom Farer, Denver, Colorado, August 30, 1999; Farer – *The Grand Strategy*, pp. 92/93. According to Farer, it seemed that Dunshee de Abranches had visited a different country than the other Commissioners. *Ibid.*, p. 93.

326 Letter from Edmundo Vargas Carreño to Carlos Dunshee de Abranches, Washington, D.C., April 3, 1978 (IACHR files). That lawyer had worked in the Commission's Secretariat since late 1975 and left the IACHR in mid-1978.

327 Farer, in: Harris/Livingstone, pp. 38/39.

328 *Ibid.*, p. 39. Mainly Commission member Dunshee de Abranches favored the inclusion of the government's observations on the findings in the final report (IACHR files).

329 See Kokott, p. 112. The author, however, is still skeptical with this explanation. The lapse between the on-site visit in January 1978 and the presentation of the final report at the General Assembly in October 1979 remains difficult to explain. More so, because the Report on Nicaragua was prepared in a record time. Further, the preliminary document was sent to the government of El Salvador not before December 1978 – accordingly it could be assumed that it was not exclusively the discussion on the handling and publication of reports that prevented the Special Report's transmittal to the General Assembly in June 1978.

impact. Since October 1979, the representatives of the new junta recognized all abuses of the former government and the IACHR document was stripped of its fierce condemnation of armed and security forces that remained in charge despite the change of government. Would a report presented at the Assembly in 1978 have provoked another development? Could an earlier presentation of the critical report have led to a victory of the insurgents in El Salvador, like in Nicaragua? Or would the document's release have helped to improve the poor human rights situation in El Salvador?³³⁰ Whatsoever, the speculation on whether the report's presentation in 1978 would have contributed to a successful Salvadoran revolution is in vain, because the organizational grade of the armed opposition was not sufficiently developed. The guerrillas were united not before autumn 1980. In addition, a popular and compelling question surrounding whether the United States influenced the delay of the report's transmission appears to be worthless because the scenario in mid-1978 was quite different than the one of 1979.³³¹ Nevertheless, the US also urged the Romero regime to improve the human rights situation before the Sandinista revolution in Nicaragua changed the regional situation.³³² A discussion of the report at the 1978 General Assembly, however, might have had important consequences – particularly taking into account the influence of the Sandinista revolution in 1979 on the perception of the Salvadoran situation in October 1979, when the OAS General Assembly was scheduled to take place in La Paz.³³³

330 Interestingly, the IACHR Report on El Salvador includes a brief chapter on economic, social and cultural rights. According to many authors, the socioeconomic context is the prevailing factor to explain the human rights situation in El Salvador.

331 In July 1979, US ambassador Frank Devine held that the only US option was to pressure Romero to improve the deplorable human rights situation. In his opinion, due to the critical situation in Central America after the Sandinista revolution, the US could not do anything else than to support Romero against the growing guerrilla threat. Telegram, From: AMEMBASSY SAN SALVADOR, To: Secretary of State, Washington, D.C., SECRET, July 26, 1979 (NSA files).

332 Department of State, Telegram, Subject: Current Foreign Relations, Confidential, May 23, 1979, pp. 6, 7 (NSA files).

333 Forsythe calls Farer's hypothesis that the IACHR report influenced the events in El Salvador "provocative", "even if lacking hard proof". Forsythe, p. 90, footnote 64.

As previously mentioned, on October 15, 1979, a coup led by a civilian-military junta ousted the repressive government of General Romero. The coup led to a strong accusation against the Romero regime embodied in the IACHR report, which probably was one of the important tools for the coup leaders.³³⁴ The Commission demonstrated satisfaction with the new government's announcement to promote and guarantee human rights.³³⁵ Notwithstanding, the US government still was concerned about the human rights situation in El Salvador.³³⁶ The Commission's contentment, however, also found expression in the General Assembly resolution on the Commission's Special Report, although the Assembly requested the IACHR to continue to observe the situation in El Salvador.³³⁷ In January 1981, the Salvadoran guerrillas launched a large-scale offensive against the armed forces just a few days before Reagan's inauguration as US president. Carter reinstalled military aid to the Salvadoran military that had a highly questionable human rights reputation. This was the beginning of the transition from Carter's human rights policy to Reagan's new approach, which actually began with the Sandinista revolution in Nicaragua.

In Nicaragua, the Somoza clan had ruled for decades and employed systematic repression in order to maintain its power and the oligarchic system. In alliance with democratic opposition forces, the leftist Sandinista National Liberation Front (FSLN) fought against the Somoza regime in a bloody civil war and finally succeeded with the so-called Sandinista revolution in July 1979. Cerna and Medina Quiroga extensively describe the interactions between the Nicaraguan government, the Commission, and the OAS political organs.³³⁸

334 Some sources claim that originally the coup leaders wanted to carry out the overthrow simultaneously with the report's presentation at the 1979 General Assembly. In any case, the plotters used the report's strong denunciations for their aims. See Farer – *The Grand Strategy*, p. 94. Interviews.

335 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 24.

336 FM AMEMBASSY SAN SALVADOR, TO SECSTATE WASHDC IMMEDIATE: SECRET SAN SALVADOR, Subject: (S) Discussion of human rights with new government of El Salvador, October 17, 1979 (NSA files).

337 AG/RES. 446 (IX-0/79): Informe sobre la situación de los derechos humanos en El Salvador, in: OEA/Ser.P/IX.0.2, 2 julio 1980, Volumen I: Actas y Documentos, Textos certificados de las resoluciones, pp. 89-90.

338 Christina Cerna – Human Rights in Conflict with the Principle of Non-Intervention: The Case of Nicaragua before the Seventeenth Meeting of Consul-

The widespread human rights violations in Nicaragua did not pose a main concern for the IACHR, which until 1978 had focused on individual complaints.³³⁹ After famous newspaper editor Joaquín Chamorro was murdered in January 1978, the president of Venezuela, Carlos Andrés Pérez, solicited the US to focus on the human rights situation in Nicaragua. In response, Carter promised to persuade Somoza to allow an IACHR visit.³⁴⁰ The Venezuelan OAS Representative, José María Machín, requested an IACHR investigation in Nicaragua in February 1978.³⁴¹ Venezuela's proposal and its general opposition towards the Somoza regime spoiled Venezuelan-Nicaraguan relations. The US State Department also suggested an IACHR visit to Nicaragua in February 1978.³⁴² The ARA telegram showed the State Department's preoccupation with the situation in that country and that a Commission investigation would serve as an outlet for public unrest in Nicaragua. The author suggests that the early encouragement, particularly from the ARA director Terence Todman, mainly focused on the prevention of the risk embodied in the increasing guerrilla threat in Nicaragua. However, later on, the IACHR report ironically contributed to Somoza's fall and the Sandinista revolution. Besides the pressure from the US State Department and Venezuela, Costa Rica considered the Somoza government an obstacle and permitted the Sandinistas to deposit their weaponry in its territory thereby incurring Nicaraguan Air Force attacks.³⁴³ In addition, the Jamaican OAS delegation and the Andean Group were supportive of the human rights issue at the OAS.³⁴⁴

tation of Ministers of Foreign Affairs, in: OAS (Ed.) – Human Rights in the Americas, Homage to the Memory of Carlos A. Dunshee de Abranches, Washington, D.C. 1984, pp. 93-107; Medina Quiroga, pp. 221-260.

339 Medina Quiroga, p. 259.

340 Sara Steinmetz – Democratic Transition and Human Rights. Perspectives on US Foreign Policy, Albany, NY 1994, p. 110.

341 Letter from Edmundo Vargas Carreño to Carlos García Bauer, Washington, D.C., April 21, 1978 (IACHR files). Medina Quiroga, p. 230; Cerna, p. 94.

342 Telegram, Department of State, FM SECSTATE WASHDC, TO AMEMBASSY Managua NIACT IMMEDIATE, and to other embassies, CONFIDENTIAL STATE 030739, February 1978 (NSA files).

343 Tom J. Farer – The Grand Strategy, p. 95. Medina Quiroga, p. 246.

344 Medina Quiroga, pp. 243/244, 249/250. Washington Post, October 23, 1979, p. A13.

In June 1978, the government of president Anastasio Somoza boldly assured that in its country, human rights were respected and promoted.³⁴⁵ In that month, the IACHR directed a request to the government in Managua asking for the permission to visit the country.³⁴⁶ At the same time, US president Carter presumably committed a mistake on June 30, when he issued a letter to Somoza in which he welcomed Somoza's good intentions and his presumed cooperation with the IACHR.³⁴⁷ Nevertheless, pressure from the US government finally convinced the Nicaraguan government to permit an on-site observation by the IACHR. In September 1978, the Carter administration emphasized its support for the IACHR in regard to the difficult situation in Nicaragua. Meanwhile, a bipartisan Congress group, frequently named as "the Nicaragua lobby", called Carter to support the traditional US ally, Somoza, in his government's struggle against the "Marxist revolutionaries".³⁴⁸ In early September 1978, Somoza did not anticipate any OAS decision against Nicaragua because he expected Argentina, Brazil, Chile, Paraguay, Uruguay, Bolivia, Guatemala, Honduras, El Salvador, Peru and Nicaragua to vote against a resolution.³⁴⁹ In the same month, Nicaragua's Foreign Minister Quintana met with Assistant Secretary of State, Viron P. Vaky. During that meeting, Quintana showed interest in inviting the IACHR and Vaky urged him to do so as soon as possible.³⁵⁰

At last, the Inter-American Commission on Human Rights conducted an on-site observation in Nicaragua between October 3 and 10,

345 IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, OEA/Ser.L/V/II.47 doc. 13 rev. 1, 29 June 1979, Original: Spanish, p. 22.

346 Farer, in: Harris/Livingstone (Eds.), p. 54.

347 Letter from Jimmy Carter, to His Excellency General Anastasio Somoza Debayle, President of the Republic of Nicaragua, Managua; The White House, Washington, June 30, 1978 (NSA files). See: Robert A. Pastor – *Condemned to Repetition. The United States and Nicaragua*, Princeton 1987, pp. 66/67; Strong, pp. 85-92; Lars Schoultz – *The Carter Administration and Human Rights in Latin America*, in: Crahan (Ed.), p. 310.

348 Washington Post, September 24, 1978, p. A15.

349 Telegram, Department of State, FM AMEMBASSY Managua, TO SECSTATE WASHDC NIACT IMMEDIATE 7746, SECRET SECTION 01 OF 02 MANAGUA 4245, Subject: Conversation with Somoza, 8 September; September 1978 (NSA files).

350 Telegram, Department of State, Drafted by ARA, FM SECSTATE WASHDC, TO AMEMBASSY MANAGUA NIACT IMMEDIATE, and to other embassies, SECRET STATE 228709, September 1978, p. 4 (NSA files).

1978, even though the original schedule was for November 1978. The Commission advanced the visit twice, primarily due to the recommendation of the OAS Meeting of Consultation of Foreign Ministers, which Venezuela proposed to discuss the situation in Nicaragua.³⁵¹ The IACHR sub commission was composed of six members: Andrés Aguilar (chairman), Tom Farer, Marco Gerardo Monroy Cabra, Carlos García Bauer, Fernando Volio Jiménez and Carlos Dunshee de Abranches.³⁵² The fact that six members participated in the on-site observation was remarkable and can be seen as a sign of the importance of such investigation.³⁵³ The Commission did not take into consideration the government's accusations against the Sandinista guerrillas and explained this with the Statute and Regulations. According to Farer, of six Commissioners, five shared the view that the human rights situation was extremely bad.³⁵⁴ Staff lawyer Roberto Alvarez and Vargas Carreño drafted the bulk of the report in a few days.³⁵⁵ Eventually, the final report accused Nicaragua's government of systematic and generalized serious human rights violations and did not include any recommendations – an unprecedented episode.³⁵⁶ This clearly indicated that

351 Originally, the visit was scheduled for November 1978, but due to the "serious events" in that country, it was advanced to October 5, 1978 and once more brought forward by a recommendation of the Meeting of Consultation of Foreign Ministers. IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, OEA/Ser.L/V/II.47 doc. 13 rev. 1, 29 June 1979, Original: Spanish, p. 122; Comisión Interamericana de Derechos Humanos – Informe sobre la situación de los derechos humanos en Nicaragua, OEA/Ser.L/V/II.45 doc. 16 rev. 1, 17 noviembre 1978, Original: Español, pp. 8-10.

352 Ibid., p. 10.

353 During the on-site investigation, president Somoza directed a speech to young graduates of the military academy in which he portrayed his government members as promoters of human rights. Telegram, Department of State, FM AMEMBASSY Managua, TO SECSTATE WASHDC IMMEDIATE 8374, Limited Official Use, October 1978 (NSA files).

354 Tom J. Farer –The Grand Strategy, p. 95. It seems to be not too difficult to conclude that Farer considered Carlos Dunshee de Abranches as the only exception who did not share the majority's view.

355 Interviews.

356 The Report on Nicaragua concluded with the words: "Los daños y sufrimientos provocados, por estas violaciones han hecho surgir entre la población nicaragüense, de la manera más patente, un intenso y general sentimiento favorable al establecimiento de un sistema que garantice la observancia de los derechos humanos." Comisión Interamericana de Derechos Humanos – Informe sobre la si-

the Commission considered the government itself as a perpetrator. In other occasions, the IACHR requested that the concerned governments prevent and sanction human rights abuses committed by governmental agents and to improve the general situation. In this case, it denounced the entire government and the omission of recommendations presented the ultimate condemnation.³⁵⁷ The Mexican Commissioner Gabino Fraga criticized the absence of recommendations, which constituted a clear sign of strongest criticism from the Commission.³⁵⁸ As the visit already had been advanced twice, the publication of the report was also rushed because the IACHR wanted to inform the public about the urgent situation in Nicaragua as soon as possible. Therefore, the Commission transmitted the report to the Meeting of Consultation, bypassing the usual transmission to the OAS General Assembly.³⁵⁹ The US State Department sought to support the report strongly, which reportedly was perceived as a “shocker” by the Carter administration.³⁶⁰ As a reaction to the IACHR document, the US vetoed a \$20 million loan from the International Monetary Fund to Nicaragua.³⁶¹ However, in late December 1978, a secret telegram demonstrated that the US government preponderantly was worried about its credibility in the region regarding human rights.³⁶² This partly serves

tuación de los derechos humanos en Nicaragua, OEA/Ser.L/V/II.45 doc. 16 rev. 1, 17 noviembre 1978, Original: Español, p. 81.

357 See Cerna, p. 96.

358 Letter from Gabino Fraga to Edmundo Vargas Carreño, Mexico City, January 29, 1979 (IACHR files).

359 Medina Quiroga, p. 232. Congressman John Murphy criticized the IACHR report that seemed to be timed to follow right after the Sandinista offensive. Text of Telegram 78State 301506, From: SECSTATE WASHDC, To: AMEMBASSY Managua, IMMEDIATE, CONFIDENTIAL STATE, Subject: Nicaragua Mediation (NSA files).

360 “Regarding Department’s comments on IAHRC Report on Nicaraguan human rights violations, I hope a strong statement will be forthcoming today or tomorrow. This statement will help us offset suspicion in some quarters that our support for a plebiscite is a device to get Somoza confirmed in power.” Telegram, Department of State, FM AMEMBASSY Managua, TO SECSTATE WASHDC IMMEDIATE, Confidential, November 1978 (NSA files, Original text in capital letters). Cerna, p. 97.

361 Sara Steinmetz – Democratic Transition and Human Rights, p. 112.

362 Telegram from AMEMBASSY Managua, to SECSTATE WASHDC FLASH 9578, SECRET Managua 6748, Managua, December 22, 1978 (NSA files). Interestingly, that secret telegram expressed pessimism on the OAS ability to condemn

to explain why the US abstained from a direct intervention in Nicaragua in 1979.

The Permanent Representative from Nicaragua at the OAS, Guillermo Sevilla Sacasa, informed the Commission about his government's rejection of the report in January 1979.³⁶³ Likewise, Somoza himself claimed that the IACHR report to be biased and furthermore criticized the US interference and its lack of impartiality in applying its human rights policy.³⁶⁴

In January 1979, the Department of State discussed the handling of possible situations at the forthcoming Meeting of Consultation of Foreign Ministers where the Nicaragua Report was to be presented. Extreme resolutions – recommending Nicaragua's expulsion from the OAS or specific sanctions – were seen as very unlikely due to the two-third vote modus, because "...any resolution will require support from a substantial number of "southern cone" members who are more than a little sensitive on IAHRC matters, and who are particularly uneasy about procedures followed by IAHRC in issuing its Nicaragua Report."³⁶⁵ Bearing in mind the voting issue, it is even more astonishing that the OAS Foreign Minister Meeting agreed on such a strong resolution. In June, the United States requested another Meeting of Consultation, which took place on June 20, 1979.³⁶⁶ The US delegation presented a draft resolution calling for the establishment of a "government of national reconciliation which takes into account all elements of Nicaraguan society". Further, the US draft proposed that an

and to diplomatically isolate the Somoza regime – exactly what happened six months later.

363 Letter from the Permanent Mission of Nicaragua at the OAS, Ambassador Guillermo Sevilla Sacas, Permanent Representative, to Carlos Dunshee de Abranches, IACHR Chairman, Washington, D.C., January 9, 1979 (IACHR files).

364 See Telegram, Department of State, FM AMEMBASSY Managua, TO SECSTATE WASHDC IMMEDIATE 1190, and to other embassies, Limited Official Use, May 1979 (NSA files).

365 Telegram, Department of State, FM SECSTATE WASHDC, TO AMEMBASSY SAN JOSÉ, INFO AMEMBASSY Managua, and to other embassies, CONFIDENTIAL STATE 001460, January 1979 (NSA files).

366 Cable from the President of the Seventeenth Meeting of Consultation of Ministers of Foreign Affairs to the Chairman of the Permanent Council, informing him of the session to be held on June 20 Wednesday, OEA/Ser.F/II.17 Doc. 29/79, 18 June 1979, Original: Spanish.

OAS peacekeeping force be sent to Nicaragua.³⁶⁷ The US persisted in preventing a Sandinista victory, but its efforts came too late.³⁶⁸ Above all, the Andean governments and Mexico opposed the US draft and supported the Sandinista forces diplomatically.³⁶⁹ Preponderantly, the bloc composed by the five Andean Group States – Bolivia, Colombia, Ecuador, Peru and Venezuela – with the support of Mexico, jointly worked hard to break with the organization's political nonintervention creed.³⁷⁰ In accordance, thirteen Member States presented another draft sponsored by the Andean Group. Finally, the resolution on Nicaragua employed the historical call for an "[i]mmmediate and definitive replacement of the Somoza regime", by stressing the poor human rights situation.³⁷¹ Concurrently, with this apparent intervention in the domestic affairs of an OAS Member State, many countries broke off diplomatic relations with Somoza's government.³⁷² By and large, the IACHR report, and the subsequent resolution from the Meeting of Consultation of Foreign Ministers that called for a removal of presi-

367 Meeting of Consultation of Ministers of Foreign Affairs, Draft Resolution (Submitted by the Delegation of the United States), OEA/Ser.F/II.17 Doc. 33/79, 21 June 1979, Original: English, Annex.

368 See: Tom J. Farer – *The Grand Strategy*, pp. 53, 95-97.

369 Cerna, pp. 99/100; Abraham F. Lowenthal – *Partners in Conflict. The United States and Latin America in the 1990s*, second, revised edition (1st edition 1987), Baltimore/London 1990, p. 98; Sara Steinmetz – *Democratic Transition and Human Rights*, p. 115.

370 See Cerna, pp. 98, 99.

371 Seventeenth Meeting of Consultation of Ministers of Foreign Affairs, September 21, 1978, Washington, D.C.; Resolution II, OEA/Ser.F/II.17 Doc. 40/79 rev. 2, 23 June 1979, Original: Spanish. See Medina Quiroga, pp. 249-254. While Jamaica, Haiti, Venezuela, Peru, Ecuador, Barbados, Grenada, the United States, Bolivia, Brazil, Panama, Columbia, Mexico, Suriname, Argentina, the Dominican Republic and Costa Rica approved the historical resolution, Nicaragua and Paraguay voted against it, Guatemala, Honduras, El Salvador, Uruguay, and Chile abstained and Trinidad and Tobago did not participate. Cerna, p. 100. Cuba's leader, Fidel Castro, allegedly described the OAS meeting as the latest in a series of crushing defeats of 'US imperialism' in the region, which showed that even the Latin American States were "disobedient" to US demands. Ambassador of the USSR to Cuba, V. Vorotnikov, Memorandum of Conversation with Fidel Castro, 25 June 1979, From Diary of V. I. Vorotnikov, Top Secret, Copy No. 4, Ser. No. 326, 4 July 1979 (NSA files).

372 Cerna, pp. 93, 98. Cerna correctly stresses that article 22 of the OAS Charter more specifically refers to nonintervention than the United Nations and underlines that measures to maintain peace and security compatible with existing treaties "do not violate the norm of intervention." Cerna, p. 101.

dent Somoza, impressively mirrored the changed mentality of the OAS.³⁷³

On July 7, 1979, the US State Department urged the IACHR to mediate in the Nicaraguan case. Seemingly, Assistant Secretary of State Viron Vaky personally turned to IACHR chairman Andrés Aguilar in Caracas. The US wanted the Commission to handle the difficult situation, apparently, in order to prevent a strong Sandinista junta. The IACHR, however, insisted on a Nicaraguan invitation and desired to act in a “noninterventionist” manner.³⁷⁴

Finally, on July 7, 1979 the Sandinistas succeeded with their social revolution and overthrew the Somoza regime. In addition, the FSLN made a promise to hold elections, which would become an embattled issue during the 1980s. In his memoirs, Somoza acknowledged that the actions of the OAS was a main factor in his resignation.³⁷⁵ Although Nicaragua was not a vital US ally of strategic importance, the traditional ties between Nicaraguan business elites, the Somoza clan, and US citizens made it difficult to garner full support for Carter’s de facto *laissez-faire* policy in Nicaragua.³⁷⁶ In fact, the Sandinista revolution mainly guided Carter’s foreign policy toward a more neorealist approach: importance in national security increased, while human rights concerns lost some impact in foreign affairs.³⁷⁷

Doubtlessly, the resolution adopted by a high OAS organization requesting to remove Somoza constitutes an almost revolutionary advancement – particularly if one takes into account elevated positions

373 In July 1979, president Somoza turned to the US Embassy in Managua and accused the FSLN of killings of his relatives. As a response, the Embassy recommended to send the IACHR immediately in order to have an observation for the time when the fighting finished. Telegram, Department of State, FM AMEMBASSY Managua, TO SECSTATE WASHDC FLASH 1690, and other embassies, Secret, Subject: (S) Reprisals against Somoza adherence, p. 2 (NSA files).

374 Department of State, Outgoing Telegram, FM SECSTATE TO AMEMBASSY CARACAS etc., Subject: REPRISALS AGAINST SOMOZISTAS, July 7, 1979 (NSC), pp. 1, 2 (NSA files).

375 Anastasio Somoza – *Nicaragua Betrayed*, Boston 1981, pp. 264, 266/267.

376 Theberge, US ambassador to Nicaragua between 1975-1977, remarks that Somoza’s National Guard would have been able to resist the Sandinistas at least until 1981 – without the changed context. James Theberge – *The Collapse of the Somoza Regime*, in: Daniel Pipes/Adam Garfinkle (Eds.) – *Friendly Tyrants. An American Dilemma*, New York 1991, p. 114.

377 Sara Steinmetz – *Democratic Transition and Human Rights*, p. 78.

of governments within the traditionally conservative OAS. Precisely, it was the first time, an OAS main organ decidedly and unequivocally spoke up against human rights violations in one of the Member States and further heeded the advice included in the IACHR Report not to seek for reforms within the Somoza system.

In October 1979, US governmental officials met with representatives of the new Nicaraguan junta and reportedly began to "...cooperate on human rights issues" at the OAS General Assembly in La Paz.³⁷⁸ The two delegations even cosponsored some human rights resolutions and the United States endorsed Nicaragua's invitation for the IACHR.³⁷⁹ Later on, when the Sandinistas established tighter relations with the Soviet Union, conservatives accused Carter of losing Nicaragua to Communism.³⁸⁰

The Ninth General Assembly of the OAS gathered in the Bolivian capital La Paz. Andrés Aguilar, chairman of the Inter-American Commission on Human Rights, presented the Annual Report of the IACHR to the First Committee and referenced the Commission's visits to El Salvador, Haiti, and Nicaragua effected in 1978 and the 1979 *in loco* observation in Argentina. The Nicaraguan delegate, Leonte Herdocia, who represented the new Sandinista government, assured the new junta's full cooperation with the Commission. Further, he announced that Nicaragua was willing to sign and ratify human rights instruments and underlined the extended invitation to the IACHR to visit his country.

Then, Commission member Dunshee de Abranches presented the Special Report based on the on-site visit to El Salvador in 1978. As

378 In August 1979, after the victory of the Sandinistas, Nicaragua's new Foreign Minister Miguel D'Escoto complained about the lobbying attempt of a former Major who sought to influence Congress. The US Ambassador in Managua, Pezzullo, judged that it would be the best to invite the IACHR because "...the IAHRC is their best protection against exaggerated charges." This shows the US confidence in the Commission as an impartial player on behalf of human rights. Telegram, Department of State, FM AMEMBASSY Managua, TO SECSTATE WASHDC PRIORITY 2036 and other Embassies, August 3, 1979 (NSA files. Original text in capital letters).

379 United States Government Memorandum, From: HA/HR Richard Graham, to: HA Ms. Derian, Subject: Your Meeting with Members of Nicaragua FSLN Directorate, December 6 at 9:15; Washington, D.C., December 5, 1979 (NSA files).

380 For instance, Donald S. Spencer – *The Carter Implosion. Jimmy Carter and the Amateur Style of Diplomacy*, New York 1988, pp. 85-99.

noted above, in October 1979, just a week before the Assembly arrived in La Paz, a civilian-military junta had replaced the dictatorship of General Romero. The representative of the new junta, Héctor Dada Hirezi, argued that – as the IACHR report clearly showed – the human rights situation in El Salvador had reached such a breaking point that the armed forces invoked the constitutional right of insurrection against a government since it had lost its capability to govern with legitimacy of the people. Dada described the first decrees approved by the junta, which were related to human rights, as a justification for the coup against the Romero regime.³⁸¹ As proof of its good intentions, El Salvador immediately ratified the American Convention on Human Rights.³⁸² However, the coup was backed by the United States, which feared a guerrilla victory against the Romero regime. The fresh memory of the Sandinista revolution led the Carter administration to implement what they had tried unsuccessfully in Nicaragua: a Somocism without Somoza. This meant that the coup was an attempt to help moderate forces in El Salvador come to power by avoiding another radical, leftist government in Central America. The schedule of the overthrow of Romero's government was clearly determined by strategic concerns: the new junta was able to present itself as the authentic defender of human rights proven by its first decrees and its commitment to the American Convention on Human Rights. Later developments of the early 1980s, discussed in chapter IV, will show that the impact of these good intentions in the Salvadoran government rapidly disappeared. The resolution on the El Salvador report, however, expressed hope regarding the new government's first announcements but further requested that the IACHR continue to monitor and report on the situation.³⁸³

Further, the Paraguayan representative, Mario López Escobar, responded to the IACHR report on Paraguay. He also replied to a Venezuelan statement and mentioned that he had many denunciations con-

381 See Klaas Dykmann, *El Salvador – Die Menschenrechte im Visier*, Hamburg 1999, p. 24.

382 OEA/Ser.P/IX.0.2., 3 noviembre 1980, Volumen II, Parte II, Primera Comisión, pp. 36, 37, 39.

383 AG/RES. 446 (IX-0/79): Report on the Situation of Human Rights in El Salvador.

cerning human rights violations in Venezuela.³⁸⁴ This attack on Venezuela by the Paraguayan delegate meant a new strategy of the military regimes: If you accuse me, I can also blame your abuses (or at least threaten to do so). Later in the debate, another Paraguayan diplomat, Rubén Ruiz, also emphasized that other countries had human rights problems as well, even the United States. Ruiz emphatically stated that since Paraguay did not represent a strategic interest, it became a target for accusations, when in reality it was only trying to defend its nation from subversion. Finally, Ruiz said that in these times, a “Sacred Inquisition” was taking place in the Americas.³⁸⁵ Likewise, in 1980, the Chilean representative, Mario Calderón, tried to soothe the discussion with a biblical reference: “In human rights matters, few, very few can throw the first stone.”³⁸⁶ Thereby, he indirectly acknowledged the desperate desire to return to the old declaratory gentlemen’s agreement style that had prevailed during the General Assemblies before 1975-76.

Apparently, the military governments’ ‘strategy’ to threaten other countries with the exhibition of their human rights records was merely a very cheap argument that might have tried to re-establish the traditional *gentlemen’s agreement* in the OAS organs. Nonetheless, it was obvious that the abuses that could have been brought up against Venezuela and the United States³⁸⁷ were not comparable neither in extension nor in seriousness to those committed by military regimes like Chile, Argentina, Paraguay or Uruguay. Commissioner Tom Farer de-

384 OEA/Ser.P/IX.0.2., 3 noviembre 1980, Volumen II, Parte II, Primera Comisión, pp. 74-78, 80.

385 OEA/Ser.P/IX.0.2., 3 noviembre 1980, Volumen II, Parte II, Primera Comisión, p. 170.

386 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II, Décimo Período de Sesiones, Washington, D.C., del 19 al 27 de noviembre de 1980, Actas de las Comisiones Primera, Segunda, Tercera y Cuarta. (Primera Comisión), p. 107 (Translation by the author).

387 Besides the past genocide against the indigenous population, the still existing discrimination of minorities, the anachronistic death penalty and the wide gap of wealth distribution in fact do offer targets to criticize the United States. However, such a criticism must base more on socioeconomic conditions than on individual rights. This issue is a sensitive one because the US has always refused to commit itself to social and economic standards as binding rights – also due to its federal structure – being aware of the huge domestic problems this would have caused. Notwithstanding, massive and systematic violations of individual human rights by the State including torture and murder did not take place in the US.

stroyed Paraguay's argument by declaring that the 'reality' in that country was almost unknown. Farer argued if Paraguay only allowed people to visit its territory they would see the reality and understand that human rights were well observed. Accordingly, Farer pointed out that such a visit was exactly what the IACHR pretended to do.³⁸⁸

A draft resolution of the IACHR's Annual Report was presented by Ecuador, Nicaragua, Suriname, the United States and Venezuela. This document named Chile, Paraguay and Uruguay and reiterated their requests towards the concerned governments to improve the human rights situation in their countries. The draft resolution also thanked Panama for its collaboration during the Commission's visit.³⁸⁹ The Chilean representative, Calderón, rejected the draft resolution and described it as "imprecise, contradictory, regressive and counterproductive". The Uruguayan delegate, Giambruno, complained that the document still called Uruguay to invite the Commission, which he considered a sole decision of each State. Giambruno thought that a visit by the Commission would generally be no problem, but that the present political attitude of the IACHR signified an obstacle to such a decision. Further, the Uruguayan representative stated that the time to consider a visit had been too short – two and a half years – and went on to criticize the hiring of an activist (Robert K. Goldman) to compose the 1978 report.³⁹⁰ Several dictatorial regimes used such delaying tactics to postpone any definite decision to invite the IACHR.

Finally, the First Committee approved the draft resolution with two negative votes (Paraguay and Uruguay) and five abstentions (Argentina, Chile, Guatemala, Brazil and Saint Lucia).³⁹¹ During the voting procedure, the military regimes again formed a makeshift bloc and tried to avoid any embarrassing resolutions against military governments. However, the representatives of those regimes did not support each other during the session as in foregoing years. The dispute on the Beagle Canal between Argentina and Chile might be one explanation for this behavior.³⁹² Nevertheless, in spite of the growing climate fa-

388 OEA/Ser.P/IX.0.2., 3 noviembre 1980, Volumen II, Parte II, Primera Comisión, pp. 80/81.

389 Ibid. 83-85.

390 Ibid., pp. 101, 106, 113.

391 Ibid., p. 170.

392 See Elizabeth G. Ferris – Toward a Theory for the Comparative Analysis of Latin American Foreign Policy, in: Ferris/Lincoln (Eds.), p. 245.

avorable for human rights issues thanks to the endeavors of the Carter administration, the governments of Argentina, Chile and Uruguay, as well as other authoritarian regimes, continued to impede the IACHR's work and question its competence. Above all, these three governments intended to prevent the General Assembly from turning into a court of discussions on human rights violations.³⁹³ Mainly two strategies were carried out to attack the Commission's activities: one was to emphasize the issue of domestic jurisdiction, which needed to be prioritized. The other attempt entailed watering down the impact of human rights debates by proposing to discuss human rights only in connection with terrorism. Medina Quiroga resumes that at least the latter argument did not have much success.³⁹⁴

At its forty-ninth session, the IACHR accepted Colombia's invitation to conduct an on-site observation, which was carried out between April 21 and 27, 1980.³⁹⁵ During its stay in Colombia, the Commission proved to be an outstanding intermediary between the government and leftist guerrillas holding hostages in the embassy of the Dominican Republic.³⁹⁶ Finally, a friendly settlement was reached, and the IACHR gained attention and respect for its remarkable diplomatic efforts.³⁹⁷

Further, on July 17, 1980, a military coup in Bolivia ousted the interim regime of Lidia Gueiler, which had supported the democratic process. The new government, led by General Luis García Meza Tejada, reportedly committed human rights violations. Subsequently, the

393 Medina Quiroga, pp. 292, 293.

394 *Ibid.*, p. 293.

395 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 27.

396 Report on the situation of human rights in the Republic of Colombia, OEA/Ser.L/V/II.53 doc. 22, 30 June 1981, Original: Spanish.

397 See G. E. do Nascimento e Silva – O papel da Comissão Interamericana de Direitos Humanos no sequestro de diplomatas em Bogotá, in: *Direitos Humanos, Homage to Carlos Dunshee de Abranches*, pp. 319-329; Diego Uribe Vargas – La Comisión Interamericana de Derechos Humanos y la toma de la Embajada Dominicana en Bogotá, in: *ibid.*, pp. 330-338; Farer – *The Grand Strategy*, pp. 117, 118.

Permanent Council of the OAS asked the IACHR to investigate the situation in Bolivia – another novelty.³⁹⁸

Two weeks after his electoral defeat against the Republican candidate Ronald Reagan in November 1980, US president Jimmy Carter inaugurated the OAS General Assembly in Washington, D.C. Carter expressed his conviction that the cause of human rights would endure after his departure from the White House.³⁹⁹ Furthermore, Carter stressed the nonintervention principle with regard to the difficulties in El Salvador and Nicaragua. Both, Carter's hope that human rights would continue to be a shaping factor of US foreign policy and his advice not to get involved in the Central American conflicts were too optimistic. Under Reagan, human rights were politicized – especially in the armed conflicts in Central America – to an extent hitherto unknown.

The discussion on a resolution concerning the IACHR reports on human rights records in six Member States resulted in numerous negotiations in private and in a final marathon debate taking more than one night of debate. The concerned countries included Argentina, Chile, El Salvador, Haiti, Paraguay and Uruguay. Finally, the Assembly agreed to incorporate an article that merely named the reports on the concerned Members and called them to improve the situation of human rights in their countries (see chapter III. 3.).⁴⁰⁰

In sum, initially, the Carter administration agreed to strengthen the OAS, although – as it had always been the case – it was judged as a slow-working and not well-focused institution. Furthermore, there were voices that described the OAS as useless and demanded reductions in US contributions. Moreover, some wanted to withdraw from

398 IACHR – Annual Report of the IACHR 1979-1980, p. 31. In December 1980, the General Assembly repeated such request. AG/RES. 484 (X-0/80): Follow-Up of The Situation of Human Rights in Bolivia.

399 “Some claim [...] that Jimmy Carter elevated human rights and democracy on the inter-American agenda and that the agenda will change when I leave office. They are wrong. Hemispheric support for human rights is a historic movement.” As cited in the Washington Post, November 20, 1980, p. A8.

400 AG/RES. 510 (X-0/80): Informe anual e informes especiales de la CIDH, in: OEA/Ser.P/X.0.2, 15 Mayo 1981, Volumen I: Actas y Documentos, Volumen I, Textos certificados de las resoluciones, pp. 80-83. Peter Calvert – The international politics of Latin America, New York 1994, p. 167. Washington Post, November 28, 1980, p. A4.

the organization. In addition, in private conversations, some Latin American leaders considered the OAS to be useless, but would not opt to abolish it.⁴⁰¹ These remarks were accompanied by other comments, which described the OAS as inefficient and futile. These tendencies lead one to assume that highlighting the human rights topic in order to strengthen the OAS, specifically the IACHR, was an attempt to bring the interest of Latin American countries back to the OAS. This might have been a strategy to regain US influence in the North-South dialogue with Latin America, which was generally characterized as anti-US-American.⁴⁰² The OAS was a virtual medium in which the US was in the position to dominate and influence decisions due to its overwhelming political and economic power in comparison with the other Member States.⁴⁰³ Therefore, the original strategic aspects of human rights policy did not vary greatly between 1974 and 1976. Presumably, in addition to humanistic considerations, Carter's human rights policy adopted similar strategic motives to those of the Ford-Kissinger administration. It can be assumed that besides altruistic aims from sectors of Carter's administration, the US mainly sought to remove controversial issues like trade relations and economic assistance from the OAS agenda and instead to focus on the human rights topic, which was considered to be less controversial for the United States.⁴⁰⁴ On the other hand, it was the US delegation that pushed for a reduced OAS budget in 1977 – with some modest success. Efforts by the United States to cut back the bureaucracy, to restructure the system of contributions and to strengthen the IACHR received various levels of sup-

401 "In fact, Latin Americans use the global North-South forum more and even take the SELA more seriously than they do the OAS." Policy Review Committee Meeting, White House, Secret Document, March 24, 1977, p. 7 (NSA files).

402 Muravshik states that "...during the Carter years, the conference of "nonaligned" nations became more blatantly aligned – against the United States – than ever before, creating the absurd situation in which the leadership of those who wished to resist total obeisance to the USSR fell by default to an obviously somewhat nonplussed Marshall Tito." Muravshik, p. 201.

403 In 1979, the US revised the 1974 Trade Act, which excluded OPEC members from the General System of Preferences. See AG/RES. 396 (IX-0/79): Exclusion of Ecuador and Venezuela from the U.S. Generalized System of Preferences.

404 See Washington Post, June 15, 1977, p. A12; June 16, 1977, p. A20. For instance, the 1977 General Assembly "...left no doubt that the Western Hemisphere is more profoundly and emotionally divided over the issue [of human rights] than over any other." Washington Post, June 23, 1977, p. A20.

port. One major problem was that the largest contributors after the US were the dictatorships of Brazil and Argentina. It appeared complicated to strengthen the IACHR since both countries could be potential targets of the Commission.⁴⁰⁵ Accordingly, the financial situation of the OAS also played a role. US president James Earl Carter actually wanted human rights to become a noticeable issue at the OAS. Nevertheless, the matter also served to draw attention away from Third World forums that enjoyed broad popularity in Latin America. Did Carter's human rights policy constitute an attempt to divide Latin America's solidarity and to smooth down its eternal struggle against US hegemony?⁴⁰⁶ The author does not think so because Latin American solidarity never did exist in an enduring and constructive form. Unlike the Ford administration, Carter showed a true interest in the region and wanted to implement his basic rights program particularly in Latin America – the region he perceived as especially affected by systematic violations. However, Farer also saw an alliance between the US and democratic Member States⁴⁰⁷ – probably an effort to divide Latin America in a similar manner to the Ford administration's attempt portrayed in chapter III. 1. Notwithstanding, the administration's approach was not consistent and too obvious since it tried to use the IACHR to implement its human rights policy. The Inter-American Commission, though, could make a difference during the Carter years, although its independence from US policy was not always entirely assured. Remarkably, however, the IACHR did not degenerate into a tool of US policy. As a matter of fact, thanks to Carter's strong support, the Commission grew – institutionally and politically – into a role that would permit it to face more difficult challenges. Notwithstanding, the delays of the publication of the reports in Panama and El Salvador as a result of internal debates eventually deprived these

405 Washington Post, December 28, 1977, p. A15.

406 Montes, for instance, does not think that the US wanted to pursue other goals with its human rights policy. Interview with Admiral Oscar A. Montes, Buenos Aires, May 17, 2000.

407 In 1978, Farer wrote: "Whatever the future may hold, the present reality is a moderating pressure for non-discrimination and a growing appreciation that some Latin and Caribbean countries have more in common with a liberal and democratic United States than with certain of their fellow developing countries." Tom J. Farer – *The United States and the Inter-American System: Are There Functions for the Forms?* The American Society of International Law, Studies in Transnational Legal Policy No. 17, Washington, D.C. 1978, p. 67.

documents of a more prominent effect.⁴⁰⁸ In sum, Carter's human rights policy within the OAS was most likely driven by a mixture of a true commitment to human rights and a dedication to more strategic aims.

Besides the aforementioned cases, the Argentine case is of particular importance. Due to its size and political importance, the Argentine case brought a shift in the IACHR's work. At last, the IACHR visited Argentina in 1979 and the legend of the 'most influential on-site investigation and Special Report' began.

III. 3. The Carter Administration, Argentina, and the OAS (1977-1980)

The IACHR visit to Argentina (1979) and its report on the human rights situation in that country (1980) have been widely regarded as the most important and consequential activity of the Commission in the period covered by this inquiry.⁴⁰⁹ This is reflected in the Commission's publication of a second edition of the report in 1999. Seemingly, besides the seriousness and extent of the abuses, the elevated significance attributed to the IACHR's performance in the Argentine case is linked to the importance and size of the country. Before 1979, the Commission had not investigated in the territory of one of the 'big' Member States (Argentina, Brazil, or Mexico). Nevertheless, the author has attempted to analyze if the Argentina visit and the report merely represent a myth. In the following, two leading questions shall be answered: Why did it take until September 1979 to carry out an IACHR investigation in Argentina and would it have been possible to prepare a Special Report on Argentina before – even without a visit? Surprisingly, the research has not provided a satisfactory investigative effort on this though a recommendable and quite readable work on the

408 The Panama Report did not influence the decision-taking process of US Senate on the ratification of the Panama Canal treaties. The discussion of the Report on El Salvador at the General Assembly in 1979 was preceded by a civil-military coup that ousted the accused Romero regime. However, the civilian-military junta that led the coup maneuvered the overthrow just in time to present itself as legitimate successor of the dictatorship.

409 In accordance, Harris/Livingstone speak of "...the Commission's pathbreaking country report in Argentina..." David J. Harris/Stephen Livingstone (Eds.) – *The Inter-American System of Human Rights*, Oxford/New York 1998, p. v (Preface).

role of the United Nations and Argentina's dictatorship exists, authored by Iain Guest.⁴¹⁰

After prosperous years in the beginning of the 20th century, an economic crisis aggravated the Argentine situation and the country started to experience continuously changing government systems led by the armed forces. This political instability known as praetorianism – a new military regime replaced the government set up by the armed forces – hampered the Argentine society in developing strong democratic ties.⁴¹¹ According to Marchak, the labor union-focused movement led by the famous populist Juan Domingo Perón also contributed to the absence of due process, rule of law and prevalent disregard for law and democracy.⁴¹² In the 1960s and the early 1970s, Argentina suffered from terrorist attacks from the extreme left and increasingly also from the extreme right. A civil war situation arose from the late sixties: many groups fought for their ends, there were struggles within the Peronist movement, sectors of labor unions, the armed forces, left-wing guerrillas and other groups.⁴¹³ Since 1970, left-wing terrorism – exemplified through the assassination of former president Aramburu in 1970 by leftist guerrillas⁴¹⁴ – grew into a serious problem for the fragile social integrity of Argentina. However, in 1973 General Perón returned to his country after a 17-year exile in Spain and was re-instated as head of State. In the end of 1973, Argentina began to sense

410 Iain Guest – *Behind the Disappearances. Argentina's Dirty War Against Human Rights and the United Nations*, Philadelphia 1990.

411 See Alain Rouquié – *The Military and the State in Latin America*, Berkeley 1987, p. 287; Diana Quattrocchi-Woisson – *Un nationalisme de déracinés. L'Argentine, pays malade de sa mémoire*, Paris 1992; Peter Waldmann – *Argentinien*, in: Walther L. Bernecker/Raymond T. Buve/John R. Fisher/Horst Pietschmann/Hans Werner Tobler (Eds.) – *Handbuch der Geschichte Lateinamerikas*, Vol. 3, edited by Hans Werner Tobler/Walther L. Bernecker, Stuttgart 1996, p. 940.

412 Patricia Marchak, in collaboration with William Marchak – *God's Assassins, State Terrorism in Argentina in the 1970s*, Quebec City 1999, p. 63. Further, she states that since 1955, "[o]rganized labour and the military were mutually hostile and were prepared to use arms in their contest for control of the state."

413 See CONADEP – *Nunca Más, Informe de la Comisión Nacional Sobre la Desaparición de Personas*, Buenos Aires 1986, p. 7. "There was, in short, a genuine threat of subversion." Marchak/Marchak, p. 3.

414 See: Marchak/Marchak, pp. 99/100.

the consequences of the oil price crisis.⁴¹⁵ After Perón's death in July 1974, his third wife, the former dancer and vice president María Estela Martínez de Perón became president.⁴¹⁶ The tremendous left-wing terrorism⁴¹⁷ provoked a response from the extreme right – the famous 'Triple A' struck back and so the country was shaken by an escalation of violence.⁴¹⁸ The government of Isabel Perón reacted with several anti-terror measures in order to roll back the terrorist threat: it declared a state of siege in November 1974, ordered to put down the guerrilla uprising in Tucumán in February 1975, and in October 1975, it issued the well-known decree that called the armed forces to "annihilate the subversion".⁴¹⁹

While Torre/de Riz and Waldmann describe the military coup in 1976 as a natural consequence of the chaos and the general violence, other authors do not share this position.⁴²⁰ According to Guest and Marchak, in the beginning of 1976, the left-wing terrorism was still dangerous, but much less threatening due to several decisive defeats suffered by the guerrilla forces.⁴²¹ Secret statistics expressed the decline of 'subversive actions', which leads Guest to conclude that there existed no justification for a military coup to eradicate left-wing 'subversion'. Moreover, while left-wing terrorism was weakened, right-

415 Juan Carlos Torre/Liliana de Riz – Argentina since 1946, in: Leslie Bethell (Ed.) – The Cambridge History of Latin America, Volume VIII: Latin America since 1930, Spanish South America, Cambridge/New York/Port Chester/Melbourne/Sydney 1991, pp. 144, 149. Marchak finds that the "dirty war" already began under the Peronist government in 1973. Perón provoked the left-wing Peronists called Montoneros to go into underground to start their revolutionary struggle when he rejected them in his speech at Labor Day in 1974. Torre/de Riz, p. 150; Marchak/Marchak, pp. 109-111.

416 María Estela Martínez was better known under her stage name "Isabel".

417 The so-called Montoneros came from the left-wing spectrum of Peronism. After his return to Argentina, General Perón turned to the right and abandoned the left-wing faction of Peronism, which resulted in antagonism of the latter.

418 Apparently, the Triple A was organized by a governmental ministry to counter left-wing groups. See Marchak/Marchak, p. 3, p. 345: footnote 1; Torre/de Riz, p. 152; Amnesty International – Political Killings by Governments, London 1983, pp. 50-60; Waldmann, p. 944.

419 Nevertheless, as Guest points out, the latter was not a *carte blanche* for the armed forces because the anti-terror campaign was led by two councils controlled by civilians. Guest, p. 19.

420 Torre/de Riz, pp. 156/157; Waldmann, p. 944.

421 Marchak/Marchak, pp. 121-126; Guest, pp. 19/20.

wing terror grew.⁴²² Likewise, Andersen views that in early 1976 the armed forces had taken over many stabilizing institutions and increased their efforts to present a military coup as imminent.⁴²³ However, it was obvious that Isabel Perón did not possess the ability to pacify the torn country and consequently was ousted by a coup led by the armed forces.⁴²⁴

On March 24, 1976, a military junta composed of Lieutenant General Rafael Videla, Brigadier Orlando Ramón Agosti, and Vice Admiral Emilio Massera seized power. The new military junta declared to lead the country to stability and saw itself as committed to the Doctrine of National Security. The coup was widely perceived as a relief because of the previous terrorist acts and general violence from left- and right-wing groups. Like the Chilean junta, the Argentine military government stressed its desire to defend Western and Christian civilization and its values.⁴²⁵ The political polarization and the prevailing climate of violence accompanied by the hatred against Peronism among certain intellectuals led to an initial acceptance of the military rule. Others just put up with the changed order and kept silent so as to not get involved. Besides the de facto censorship, the Argentine press welcomed the military's intervention as well.⁴²⁶ Unlike in the Chilean case, the Argentine military coup d'état was accompanied by a consenting international opinion, which undoubtedly undermined the

422 Guest, pp. 19/20. According to Guest, in the first three months of 1976, right-wing groups killed 549 persons; the left-wing terrorists had murdered 687 people in the five years before.

423 Martin Edwin Andersen – *Dossier Secreto. El mito de la guerra sucia*, Buenos Aires 1993 (Original: *Dossier Secreto: Argentina's Desaparecidos and the myth of the "Dirty War"*, 1993), p. 200. Furthermore, some sources assume that left-wing terrorism was invented to justify the military coup – a theory that is widely seen as unlikely. Marchak/Marchak, pp. 100/101.

424 Many authors willingly employ the term "misgovernment" or the Spanish expression "desgobierno" to describe María Estela Perón's performance at the head of State. Guest describes Juan Domingo Perón's decision to make his third wife his vice president a "grotesquely inappropriate choice." Guest, p. 18.

425 Margaret E. Keck/Kathryn Sikkink – *Activists beyond Borders, Advocacy Networks in International Politics*, Ithaca 1998, p. 106.

426 Wolfgang S. Heinz – *Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983*, in: Heinz/Frühling, p. 637. Marchak/Marchak, pp. 147/212. Even the *Washington Post* greeted the military takeover and went further by describing that "Argentina is not your normal troubled Latin country." *Washington Post*, March 30, 1976, p. A14.

work of human rights groups.⁴²⁷ According to interviews, the initial lack of knowledge of the Commission caused a delay of information to the IACHR, which took some months.⁴²⁸

The new junta started the so-called 'Process of National Reorganization', which simply translated, was a total war on 'subversion' – a term that was equated with terrorism. Carlos W. Pastor, Foreign Minister between 1978 and 1981, describes the years 1976 and 1977 as the most critical in the armed forces' battle against terrorism, which was "massively supported by the population". According to Pastor, in 1978, the 'war' was won but subversives brought their destructive campaign to the exterior and counted with remarkable economic resources, alighting left-wing press and organizations like Amnesty International.⁴²⁹ Especially in the first three years under military rule, all sectors of Argentine society were affected by the self-declared 'dirty war'.⁴³⁰ The battle against subversion spun out of control as almost everyone with any suspicious behavior or connections to suspicious people became a victim of State persecution. Further, the armed and security forces at times committed mistakes and punished the wrong person. Moreover, the general atmosphere of repression made personal acts of revenge possible as well. The forced disappearances became a systematic State policy⁴³¹ and began one of Argentina's darkest chapters of history.⁴³² In general, the Catholic Church was accused of complicity with the junta since many of its members and the

427 Daniel R. García Delgado/Vicente Palermo – El movimiento de los derechos humanos en la transición a la democracia en Argentina, in: Daniel Camacho/Rafael Menjivar (coord.) – Los movimientos populares en América Latina, Mexico City 1989, p. 412.

428 Interviews.

429 Carlos Washington Pastor – Chile: La guerra o la paz 1978-1981, in: Silvia Ruth Jalabe (comp.) – La política exterior argentina y sus protagonistas 1880-1995, Consejo Argentino de Relaciones Internacionales, Buenos Aires 1996, pp. 289, 290.

430 Torre/de Riz, pp. 158/159. These authors hold that "...the military regime's repression was imposed on a country where the cult of violence was already deeply rooted." Ibid., p. 159.

431 Guest, pp. 30/31, 32.

432 Heinz unequivocally states that gross human rights violations in Argentina were not 'excesses' as asserted by the military, "...they were an inherent and indispensable part of the state terrorism that was practiced by the military juntas." Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983, in: Heinz/Frühling, p. 601.

official leadership defended the campaign against ‘subversion’.⁴³³ The National Commission on Disappeared Persons described the years under military rule as “the worst and most savage tragedy of our history.”⁴³⁴

The repression carried out by the armed forces resulted in the creation of several human rights groups. The Permanent Assembly on Human Rights (*Asamblea Permanente de Derechos Humanos*, APDH) was founded in 1975 as a response to the Triple A killings.⁴³⁵ Emilio Mignone, who unyieldingly and courageously fought for the truth on the disappearance of his daughter Mónica, and Raúl Alfonsín, who later became president, were both members of the Assembly. Also significant is the emergence of the Mothers and Grandmothers of the Plaza de Mayo. At the Plaza de Mayo, in the very downtown area of Buenos Aires in front of the Executive Building, the Casa Rosada, the *Madres* (mothers) denounced the disappearance of their sons and daughters and requested information on their whereabouts. Further, the *Madres* sought to influence foreign governments, mainly through a network in the US, to cut military and economic aid for the military junta.⁴³⁶ The Grandmothers (*Abuelas*) of the Plaza de Mayo demon-

433 See Jaime Malamud Goti – Power Under State Terror, in: Harold Hongju Koh/Ronald C. Slye (Eds.) – *Deliberative Democracy and Human Rights*, New Haven/London 1999, p. 194. There were also parts and individual members of the Catholic Church who condemned the repression in various occasions. See CONADEP, p. 259; Marchak/Marchak, pp. 235-250.

434 CONADEP, p. 7. Guest asks whether murder and disappearances did prove the discrepancy between law and reality. He comes to the conclusion that it did not and in a sense found that disappearances were a proof of Argentine legal tradition because the armed forces – aware about its actions illegality – did it in secret. Guest, p. 27. In contrast, the author does not interpret the clandestine actions of the military as indirect respect for the law, more as a result of the lessons from the Chilean case in regard to international criticism. Guest’s analysis could be compared to a typical approach of political science, which attributes an indirect respect to the law to a burglar, for instance. Through the coverage of his illegal acting, he accepts the illegality of his action. The author tends to interpret it merely as a result of bad experience because if the burglar did not care about the secrecy of his robbery, he would be detained and put in jail. Likewise, the Argentine junta did not want to experience the same international tribunal that faced the Chilean regime of General Pinochet concerning its human rights practices. See also: Keck/Sikkink, p. 104.

435 García Delgado/Palermo, p. 410.

436 Margaret E. Keck/Kathryn Sikkink – *Activists beyond Borders, Advocacy Networks in International Politics*, Ithaca 1998, pp. 16/17.

strated on behalf of their kidnapped grandchildren, whose parents presumably had died in captivity, and who then lived as ‘adopted’ children. All these organizations and others provided information to international human rights bodies and the international media. At the same time, many anti-junta organizations emerged around the world, particularly in Washington, D.C., Paris and Geneva.⁴³⁷ Indeed, the lobbying of Argentine and international human rights groups presented a real threat to the junta, which sought to denounce accusations as an international campaign of Marxists against Argentina. The junta hired public relations agencies to improve the human rights perception of the Argentine government in eight countries, above all in the United States.⁴³⁸

After the military takeover, the navy under Admiral Emilio Massera’s control took of the Foreign Ministry and was eager to dismiss all diplomats found to be “ideologically unreliable”. Immediately in the aftermath of the coup, 30 diplomats were retired and two months later another fifty diplomats were fired. Navy officers, who were unqualified for diplomatic affairs, replaced the dismissed ambassadors and took over key positions – also at the OAS.⁴³⁹ In March 1976, IACHR member Genaro Carrió, an Argentine, declared that he would not to seek reelection. His decision was attributed to the pressure Chile had placed on the Commission. It is possible as well that the military coup in Argentina also led Carrió to choose not to consider a second term.

By October 1976, the international situation for the junta was extremely delicate. Carter’s presidential campaign stressed human rights, and members of an Argentine human rights group testified before US Congress. Further, in Europe and North America, the junta was perceived as brutal and faced skepticism and hostility. As a result of these pressures, the military rulers decided to permit an inquiry by an Amnesty International (AI) team – an NGO formerly described by the junta as Marxist but simultaneously as tool of Western democracy. Besides other reasons, the junta saw the advantage of such a visit in

437 See Guest, pp. 51-59, 67.

438 The US-based PR agency Marsteller Inc. contacted the Council of the Americas and members of US Congress; it also focused on multinational corporate investment in Argentina and enabled foreign journalists to interview junta members. Schoultz, pp. 50-52.

439 Guest, p. 24.

identifying Amnesty's contacts in Argentina and seeing how that organization functioned – in order to 'know the enemy'.⁴⁴⁰ The visit took place in a hostile atmosphere; the local newspaper reports exploited the AI presence by describing the team as biased and using harsh vocabulary to criticize the foreigners. However, the report was published in March 1977 and as a result, the Amnesty International on-site visit became one of the most important investigations *in loco* ever conducted by a human rights NGO. Partly as a result of this report, Amnesty International was awarded the Nobel Peace Prize nine months later.⁴⁴¹ Further, Schoultz considers it difficult to overestimate the influence of Amnesty International reports on US policy during the 1970s.⁴⁴² Another human rights activist, the founder of the Argentine NGO Service for Peace and Justice (SERPAJ), Adolfo Pérez Esquivel, succeeded Amnesty International and won the Nobel Peace Prize in 1980.⁴⁴³ If Amnesty International – an NGO without a heavy political and financial support at that time – conducted an on-site visit to Argentina, why did the IACHR, as a renowned organ of an inter-governmental organization, not do the same? It could be argued that the very realization of the Amnesty International visit made it permissible for the Commission not to press on with their own on-site observation. The London-based NGO did a good job and drew criticism from the Argentine government for it, while the IACHR still was enjoying relatively good relations with the Argentine government. On the other hand, it was surprising that the junta did not allow an IACHR visit instead of an Amnesty International mission. Apparently, the military regime considered that the likely negative conclusions declared by a nongovernmental group like AI could be easier refused and criticized than a report by an OAS organ. Accordingly, the IACHR was viewed as particularly threatening in Buenos Aires due to its serious and renowned reputation.⁴⁴⁴ On the other hand, in November 1976, Jimmy Carter had won the presidential elections in the United States and turned human rights into a vital agenda point.⁴⁴⁵ The

440 Guest, pp. 76-80.

441 Keck/Sikkink, p. 104; Guest, pp. 80-86; Schoultz, p. 84.

442 Schoultz, p. 84.

443 See Washington Post, July 7, 1984, p. A15.

444 Guest, p. 173.

445 US State Department documents seem to prove that Kissinger encouraged the Argentine junta to "succeed quickly" in resolving the terrorist problem. FM

junta might have feared that an IACHR visit at that time – in 1976 and 1977 when the disappearances and other abuses were at a peak – together with Carter's support for such an international mission with the authority of the OAS, would have meant a much more serious and more substantial accusation. However, both reports – the 1977 Amnesty and the 1980 IACHR reports – were important and highly critical ones. The difference was that Amnesty did not belong to any government and so could easily be blamed for being biased and for pursuing political goals. An IACHR visit in 1977 could have placed enough pressure on the military junta that it would have been forced to make notable concessions.

In 1976, the United Nations Human Rights Commission (UNHRC) found itself in difficult conditions: the UN Secretary General, the controversial Austrian Kurt Waldheim, considered human rights to be an embarrassing topic and did not elevate it to a main issue in the UN. However, the UNHRC was composed by some members from countries where torture and human rights abuses were the order of the day (e.g. Uganda, Iran, Uruguay). The complicated situation at the UN gave even more importance to the NGOs. In general, every year, the composition of the UN Commission and several other circumstances affected the UNHRC's performance – sometimes it was strongly condemning a regime, sometimes it was incredibly understanding and even avoided a necessary mentioning of widespread abuses. Further, on August 19, 1977, the Soviet Union and Argentina signed a massive trade agreement, which also reportedly influenced the countries' voting behavior at the United Nations. According to Guest, the Soviets also refused many resolutions condemning Argentina in the UN organs, though he does not consider the Soviet-Argentine alliance a strong one – merely limited to practical issues like human rights and trade matters.⁴⁴⁶ Furthermore, it was Argentina's Ambassador Gabriel Martínez who succeeded in keeping his

AMEMBASSY Buenos Aires To SECSTATE WASHDC PRIORITY 7181. Subject: Other Aspects of September 17 Conversation with Foreign Minister Ref: Buenos Aires 6100. Document Number: 1976Buenos06130, October 1, 1976; Memorandum of Conversation, Department of State, Secret. Subject: Secretary's Meeting with Argentine Foreign Minister Guzzetti, October 7, 1976, Secretary's Suite, Waldorf Astoria, New York.

⁴⁴⁶ Guest, pp. 97-99, 119.

country's name from appearing in critical UNHRC resolutions.⁴⁴⁷ Finally, Martínez also achieved the dismissal of his principal foe at the UN Human Rights Division. The Division's activist and dedicated director Theo van Boven was fired by Secretary General Javier Pérez de Cuéllar in 1982. In general, Guest's book describes the Argentine strategic and diplomatic maneuvers in the United Nations to a prolific extent. For this study it is of interest that the UN was blocked by different coalitions of the Argentine diplomats – this must have laid even more pressure on the Inter-American Commission on Human Rights, which at that time experienced its greatest influence and major support from the Carter Administration.

The new administration of Jimmy Carter presented a dedicated human rights defender who would face the dictators in Argentina: Assistant Secretary of State for Human Rights, Patricia Derian (see chapter III.2.). Assistant Secretary of State Terence Todman convinced Derian to visit Argentina, apparently hoping that such a visit would improve her view towards the junta. Todman and the ARA were considered pro-junta at that time.⁴⁴⁸ In fact, Derian paid three visits to Argentina in 1977. Those experiences convinced her even more to fight the repression in that country.⁴⁴⁹ During 1977, Carter began to reorganize his political efforts on behalf of human rights and to focus more on the UN and the OAS in order to implement his human rights policy.⁴⁵⁰

In March of 1977, the *Washington Post* concluded that the military regime in Argentina had gained support due to the criticism on human rights abuses brought up by the Carter administration. Sources of that newspaper blamed Carter's proposal to halve military aid to Argentina because this unified moderate elements and falcons in the armed forces in a nationalistic uproar. Due to Amendment 502B, Secretary of

447 Martínez' agile and mostly successful campaigning for his military junta is vividly described by Guest. See particularly pp. 119-145, 305-325.

448 According to Guest, the ARA was "a fierce defender of the Junta". Guest, p. 236.

449 Guest, p. 157.

450 "By the middle of 1977 it was also clear that the United Nations could draw the poison from bilateral confrontation. This was vital, because Carter's human rights policy virtually demanded such confrontation. The Argentinian Junta realized this clearly. One 1977 Foreign Ministry memo predicted accurately that the U.S. position in the U.N. and OAS would toughen noticeably as domestic resentment grew against Carter's human rights policy." Guest, p. 160.

State, Cyrus Vance, announced the reduction of military aid to Argentina, Uruguay and Ethiopia – South Korea was left out because of its strategic importance. This meant a humiliation for Argentina because the US did not consider it of strategic significance.⁴⁵¹ As a result, Argentina – along with Brazil and Guatemala – declared not to accept US military aid for 1978.⁴⁵²

Selser states that former Secretary of State, Kissinger, advised the Argentine junta in 1977 to go ahead with the disappearances but to be fast and to finish it before the US Congress would meet.⁴⁵³ In November 1977, US Secretary of State Cyrus Vance visited Argentina. He sought to follow a more moderate approach of the Carter administration that had notably smoothed its human rights focused foreign policy. In addition, Vance came to Buenos Aires to convince Argentina to become part of the Latin American nuclear-free zone (Treaty of Tlatelolco).⁴⁵⁴

In August 1978, the *Washington Post* perceived an increasing self-confidence and nationalism in Argentina. As a result of the pride of the victory at the World Cup Soccer Championship in June 1978, there were several campaigns that sought to defend Argentina against international criticism. Among other factors, this nationalistic behavior also contributed to the worsening of US-Argentine relations.⁴⁵⁵ In the US, the atmosphere in Congress was affected by the Allis Chalmers case, which concerned a credit of the Eximbank for a firm in Texas that provided computerized ID systems for police cars in Buenos Aires. During the summer of 1978, the mood in Congress shifted from support for Carter's human rights policy to worries over

451 See Washington Post, March 31, 1977, p. A17.

452 Pflüger, p. 230; Guest, p. 164. Argentina rejected \$15 Million US aid. Washington Post, March 24, 1977, p. A14.

453 See: Gregorio Selser – El Documento de Santa Fé, Reagan y los derechos humanos, Mexico City 1988, p. 92. Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983, in: Heinz/Frühling, p. 696.

454 Interestingly, the *Washington Post* still maintained a certain position toward the Argentine military regime, which was characterized by an understanding tone for the anti-terror measures employed by the armed forces in charge. The newspaper attributed many of the violent acts from the right to sectors over which the government had no control. Washington Post, November 20, 1977, p. C6.

455 Washington Post, August 23, 1978, p. A17. Recently, old rumors regarding alleged Argentine bribes to reach the final witnessed a revival.

its price.⁴⁵⁶ Subsequently, due to the changed mood, the US administration altered its approach and attempted to lay more emphasis on multilateral efforts to enforce human rights. Besides the fact that the US could not be blamed easily for unilateral intervention, the multilateral option also provided another important advantage: it was cheaper and therefore more attractive to be accepted by Congress. The US came up with a proposal: If Argentina invited the Commission and reinstated the 'right of option' that allowed detainees to select between prison and exile, the United States would change its strong position.⁴⁵⁷ So, the Commission was awarded an important position within Carter's foreign policy specifically concerning the difficult Argentine-US relations. Maybe this scenario also helps to explain why the Commission conducted its investigation relatively late: it might have been a political decision of the US not to issue a report without an on-site observation. But this suggestion is merely of hypothetical nature.⁴⁵⁸

Already in early November 1976, the *Washington Post* reported that the IACHR had laid "...the groundwork for possible visits to Chile and Argentina..."⁴⁵⁹ If this was true, why did it take so long? Especially if one takes into consideration that the UN was in a weakened state at that time, the need to fill the vacuum and the chance for exposure were great for the IACHR. Moreover, unlike the first visit to Chile, which took place relatively fast (including Reque's instant visit), the political and financial support by the US had grown significantly.

456 See Guest, pp. 164-172, particularly pp. 170-172.

457 Guest, pp. 172/173.

458 Furthermore, it might appear to be helpful to take US resentments against the Peronist movement into consideration though the author does not deem this aspect very important. Due to Perón's sympathy with European fascism during World War II and the obvious anti-US attitude heralded by Peronists, the United States were cautious and resentful toward that populist movement. Because the military regime was considered to be an enemy of Peronism, it might be concluded that this element also affected US opinion regarding the military junta. The author, however, does not consider this argumentation very likely. See Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983, in: Heinz/Frühling, p. 610.

459 *Washington Post*, November 9, 1976, p. A16. Also see *Washington Post*, June 23, 1977, p. A20.

The IACHR received information from Argentine and international human rights groups on the situation in Argentina.⁴⁶⁰ However, in the first years of the military junta, the Argentine government rejected the request of the Inter-American Commission on Human Rights to conduct an on-site observation on the situation of human rights in that country. It is likely that the experience of the Chilean case was one of the reasons for this refusal by the junta. The junta feared the IACHR and some government sources claimed that the Commission members shared "...a leftist political bias coupled with zealous determination to castigate military governments."⁴⁶¹ Nevertheless, the IACHR succeeded with some individual cases.⁴⁶²

In these years, the Commission repeatedly asked Secretary General Alejandro Orfila, himself Argentine, to facilitate a Commission's visit to Argentina. It could have been a factor for the delay in the IACHR on-site inquiry that the Argentine Orfila sought a reelection in 1979 and thus had to assure his government's consent.⁴⁶³ According to the former Argentine Foreign Minister, Oscar Montes, at the annual General Assemblies the OAS and Orfila asked the junta to permit an IACHR visit. Furthermore, Montes saw Orfila as under pressure from the United States.⁴⁶⁴ Reportedly, Orfila had a major impact in convincing the Argentine government to permit a Commission visit.⁴⁶⁵ It is possible that Orfila eventually called the military junta's president Jorge Videla and told him that an IACHR report was inevitable – with or without a visit. The advantage would be that a report based on an on-site investigation would include the government's opinion. Furthermore, Videla's first reaction should have been silence but then he reportedly responded "Orfila, the Commission shall come".⁴⁶⁶ This incident – if it is correctly recalled – could prove the effectiveness of Orfila's management.

In 1977, at the General Assembly in Grenada, Secretary of State Vance met with Argentina's Foreign Minister Oscar Montes who also

460 Interviews.

461 Guest, p. 173.

462 See, for instance, CONADEP, p. 249.

463 Interviews.

464 Interview with Admiral Oscar A. Montes, Foreign Minister 1976-1978, Buenos Aires, May 17, 2000.

465 Interviews.

466 Interviews.

conversed with the IACHR's chairman, Andrés Aguilar. Vance and Montes mainly discussed the Treaty of Tlatelolco and a possible visit of the Commission. Montes, however, rejects the assumption that both topics had anything to do with the other.⁴⁶⁷ Though Montes holds that the junta was ready to cooperate, the Commission's skeptical attitude proved to be right when an official request for an IACHR on-site observation was turned down.⁴⁶⁸

In that year, 1977, the Commission received news on many cases of abuse in Argentina, which by number clearly exceeded those attributed to the Chilean authorities.⁴⁶⁹ In comparison, the human rights organ issued three Special Reports on Chile between 1974 and 1977. The IACHR Annual Report of 1978 dedicated more than twenty pages to individual cases allegedly occurred in Argentina. The Commission document mentioned arrests, detentions, torture and disappearances and the prohibition of Jehovah's Witnesses.⁴⁷⁰ Nevertheless, the 1978 Annual Report section called 'Development of the Human Rights Situation in Various Countries' discussed the situations in Chile, Panama, Paraguay and Uruguay but did not refer to Argentina. At its forty-third session (special) in Caracas, between January 26 and February 11, 1978, the IACHR decided to prepare a report on human rights in Argentina.⁴⁷¹ Andrés Aguilar directed two letters to Foreign Minister Montes in order to inform the junta of its decision to prepare a report and to ask for Argentina's permission for an on-site visit. Aguilar stressed that the Commission would prefer to be officially invited by the government than to formally request permission for such

467 Interview with Admiral Oscar A. Montes, Buenos Aires, May 17, 2000.

468 Guest, p. 173. Montes states that he principally told Vance to turn to the government in order to invite the Commission. Interview with Admiral Oscar A. Montes, Buenos Aires, May 17, 2000.

469 Letter from Andrés Aguilar to Charles Moyer, Caracas, August 16, 1977 (42 cases attributed to Argentina), Letter from Andrés Aguilar to Charles Moyer, Caracas, August 26, 1977 (Argentina: 20 cases, Chile: 8), Letter from Andrés Aguilar to Charles Moyer, Caracas, September 9, 1977 (Argentina: 19, Chile: 5), Letter from Andrés Aguilar to Charles Moyer, Caracas, September 16, 1977 (Argentina: 41, Chile: 18). All letters from the IACHR files.

470 IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, OEA/Ser.L/V/II.47 doc. 13 rev. 1, 29 June 1979, Original: Spanish, pp. 29-52.

471 IACHR files.

a visit.⁴⁷² Obviously, this was the typical IACHR practice. Aguilar probably tried to lay pressure on Argentina by saying: We will prepare the report anyway, but if you let us in, you can also influence the outcome. Argentina's Foreign Minister Oscar Montes, however, did not welcome the Commission's decision to prepare a Special Report.⁴⁷³

In June 1978, the OAS General Assembly gathered in Washington, D.C. US president Carter delivered a speech, which was, according to Guest, perceived as "remarkably bellicose" in Argentina. Guest, however, finds that the confidential talks initiated and handled by the Argentine OAS Secretary General Alejandro Orfila, who was considered to be no declared enemy of the junta, smoothed down the importance of Carter's remarks. He sees Orfila as a figure that intermediated on behalf of the junta in order to mitigate the pressure on the Argentine government. Orfila invited Aguilar and Montes to his house in Washington. During the subsequent session (June 9-23, 1978), the Commission received Argentina's Foreign Minister who invited the IACHR to visit Argentina to "verify the juridical-legal conditions" prevailing in the country. Notwithstanding, the Commission asked for the opportunities granted to the Commission for such a visit.⁴⁷⁴ The IACHR did not accept a visit with such restrictions: the Commission found it unacceptable.⁴⁷⁵ Subsequently, the US State Department decided to turn down the Eximbank funding for Argentina: "Montes returned to Buenos Aires from Washington under a cloud, and a bitter argument erupted within the Argentinian military over whether to issue an unconditional invitation to the IACHR."⁴⁷⁶

Later in 1978, US Vice President Walter Mondale and junta member General Jorge Videla came together during the swearing-in ceremony of Pope John Paul I in Rome. At those clandestine negotiations, the US and Argentina reached an agreement that enabled the

472 Letters from Andrés Aguilar, Chairman, to Vice Admiral Oscar A. Montes, Foreign Minister, Caracas, February 3, 1978 (two letters were prepared on the same day, IACHR files).

473 Letter from Oscar A. Montes, Foreign Minister, to Andrés Aguilar, Chairman, Buenos Aires, February 17, 1978 (IACHR files).

474 IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, pp. 113, 114.

475 Letter from Andrés Aguilar, to Oscar A. Montes, Foreign Minister, June 23, 1978 (IACHR files).

476 Guest, pp. 173, 174, p. 499: footnote 24.

IACHR to visit Argentina.⁴⁷⁷ The US State Department saw itself under pressure to set up a deal with Argentina due to the controversy caused by the Allis Chalmers affair.⁴⁷⁸ In exchange, the US promised to provide export licenses for certain points on the munitions list and to support the funding of the Export-Import Bank.⁴⁷⁹

As an advantage for the United States that was mentioned before, an investigation by the intergovernmental body of the OAS further did not hamper the revived nationalism in Argentina since the IACHR constituted a multinational body and could be presented as a predominantly Latin American institution. This was Carter's intention when he began supporting the IACHR in order to avoid accusations of a unilateral human rights imperialism by the US.

According to the IACHR files, Argentina's Foreign Minister Oscar Montes reiterated an invitation to the IACHR on October 10, 1978, proposing the second trimester of 1979 for the visit.⁴⁸⁰ This meant that the Commission would have been able to carry out the investigation as early as April 1979. Officially in November 1978, the Inter-American Commission on Human Rights decided to accept Argentina's invitation for the on-site observation.⁴⁸¹ The IACHR pro-

477 Former Foreign Minister Montes recalls that he informed the junta members Videla, Massera, Agosti and the Minister of Interior, Harguindeguy about the talks he had in Washington and that the government finally decided to invite the Commission. Subsequently, Montes remarks that he sent a note to the OAS to arrange the IACHR investigation. Interview with Admiral Oscar A. Montes, Buenos Aires, May 17, 2000.

478 Guest, p. 174. According to the *Washington Post*'s editorialist the following was the reason for the junta's permission for the visit: "Carter pried it in by procuring an Eximbank loan for a bug Allis-Chalmers deal and, I gather, by agreeing to deemphasize public bludgeoning in favor of asking quietly about individual cases in "non-papers", documents without letterhead or signature." *Washington Post*, December 5, 1980, p. A17.

479 "On September 4 Mondale and Videla worked out a deal and a timetable. The United States would give the green light to EXIM funding before September 15, the deadline for bids for the Yacryeta project. The Junta would issue an invitation to the IACHR before October 23, the IACHR deadline." Guest, p. 175. See also: Keck/Sikkink, p. 108.

480 Letter from Oscar A. Montes, Foreign Minister, to Andrés Aguilar, Chairman, Buenos Aires, October 10, 1978 (IACHR files).

481 IACHR – Annual Report of the Inter-American Commission on Human Rights 1978, p. 123.

posed to visit Argentina in May/June 1979.⁴⁸² The Argentine government agreed on a visit between May 28 and June 9, 1979.⁴⁸³

Since October 1978, the Argentine government had not answered the Commission's requests concerning individual cases and limited its responses to the resolutions adopted by the IACHR. Since August 1979 – the Commission's visit was forthcoming – the junta in Buenos Aires provided new and more detailed answers, which explained the investigations undertaken by the authorities.⁴⁸⁴ According to Keck and Sikkink, the junta switched from its initial rejection of international human rights interventions to a "cosmetic cooperation" and possibly to concrete improvements of the human rights situation as a result of the international pressure.⁴⁸⁵

Carlos Washington Pastor, former Foreign Minister of the junta, stated that the government invited the Commission to clarify the reality in Argentina.⁴⁸⁶ This was exactly the junta's intention: to invite the IACHR in order to verify the 'normalized' and improved situation after its 'housecleaning'.⁴⁸⁷

According to Schoultz, Argentine delaying tactics might have been intended to avoid a discussion of a Commission report during the General Assembly Meeting in La Paz in October 1979.⁴⁸⁸ However, the entry-into-force of the American Convention on Human Rights and its consequences for the institutional proceedings of the Commission, including the election of new members, were named among the main factors – at least during 1979 – which led to the postponement of the IACHR's visit.⁴⁸⁹

482 Letter from Carlos Dunshee de Abranches, Chairman, to Carlos Washington Pastor, Foreign Minister, November 14, 1978 (IACHR files).

483 Letter from Carlos W. Pastor, Foreign Minister, to Carlos Dunshee de Abranches, Chairman, Buenos Aires, December 18, 1978 (IACHR files).

484 Inter-American Commission on Human Rights – Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49 doc.19 corr.1, 11 abril 1980, Original: Spanish, new edition 1999, p. 121.

485 Keck/Sikkink, p. 109.

486 Pastor, p. 290.

487 Washington Post, December 5, 1980, p. A17.

488 Schoultz, p. 311 and p. 349, footnote 8.

489 The Commission itself mentioned the entry-into-force of the Convention and the respective institutional changes as the reason for the observation's postponement. IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, pp. 18/19; IACHR – Report on the Situation of Human Rights in Argentina, p. 1.

The junta delayed its invitation to the Commission until October 1978, which fed suspicions and rumors that reported killings from detention camps to be visited by the IACHR in order to ‘clean up’ the most questionable centers. As Guest states, those accusations were not confirmed but nevertheless, the delay did provide the junta enough time to present those camps in a better light.⁴⁹⁰ It is a fact, that in 1979, the number of forced disappearances had notably decreased.⁴⁹¹ When the IACHR finally visited Argentina, the worst years of the ‘dirty war’ were already over.

For the understanding of the impact of the Commission’s visit, it is necessary to portray a picture of the international context at that time. By the end of 1978, the SALT II negotiations on disarmament again got under way and the final treaty was signed at the Vienna summit in June 1979. The Nicaraguan Revolution had just taken place before the IACHR visit to Argentina as well as conservative Margaret Thatcher’s electoral triumph in Great Britain. In July 1979, after months of talks, President Carter spoke at the Camp David negotiations with leaders of the Palestine Liberation Organization (PLO), which was widely perceived as a terrorist group at that time.⁴⁹² In addition, Iran’s Islamic Revolution occurred in 1979. As a result, Carter’s popularity went down according to survey results. Furthermore, resignations in Carter’s administration troubled the government’s stand. Obviously, Carter saw himself domestically under pressure because of the ‘loss’ of Iran and Nicaragua and the negotiations with the PLO. Consequently, these circumstances, problems in his cabinet and, of course, pressure from US Congress to stick to traditional allies, caused the IACHR visit to become a sensitive issue, since the Commission must have reflected on whether it could still count on the undivided support of the US.

In the same year, 1979, the Argentine government went ahead with a propaganda campaign to influence international public opinion with regard to its human rights practice. For instance, the so-called Pa-

490 “By 1979, the population of detainees at the ESMA had been reduced to one hundred.” Guest, pp. 175/176.

491 CONADEP, p. 298. See the table on forced disappearances. The climax of disappearances was reached between 1976 and 1978 and since then decreased subsequently.

492 See John Dumbrell – *The Carter Presidency. A re-evaluation*, Manchester, NY 1993, pp. 5-7.

triotic Argentine Association published a booklet on “Argentina and its Human Rights”. Human Rights were not described nor discussed at all, but terrorism in the world and in Argentina filled the pages with impressive photographs condemning the international campaign against Argentina.⁴⁹³

In July 1979, the OAS representative in Argentina, Roberto Monti, and Foreign Minister Carlos Washington Pastor signed a treaty to assure a better cooperation between the organization and Argentina.⁴⁹⁴ The fact that Monti was an Argentine was considered as unusual. Nevertheless, the Commission expressed its gratitude for the “full support” Monti had provided during the investigation.⁴⁹⁵ In August, the Secretariat estimated the cost of the on-site observation to be \$119,795.⁴⁹⁶

In the end of July, IACHR Executive Secretary Edmundo Vargas Carreño arrived in Buenos Aires to set up the agenda for the Commission’s observation *in loco*. The first press reports on the IACHR visit demonstrated the media’s unfamiliarity with the Commission. Furthermore, the press reported on the forthcoming IACHR investigation by linking the visit to pressure of human rights groups and public opinion in the United States.⁴⁹⁷ An Argentine NGO activist holds that already the preparatory visit led many to speak of a “whitewashing, which would take place when the OAS arrives”.⁴⁹⁸ Likewise, Nobel

493 The document was obviously directed to foreign recipients – the IACHR visit was forthcoming – and provided English and French translations of the Spanish text. Maybe the most revealing part that followed impressive photos of grisly terrorist victims, demonstrating the Junta’s opinion on human rights: “To those who use and wield “Human Rights” as a weapon to attack our country, we ask: Where these innocent victims of stateless terrorism protected or not by “Human Rights?”” *Asociación Patriótica Argentina – La Argentina y sus derechos humanos*, Buenos Aires 1979, p. 144 (Emphasis and error in the original).

494 *La Prensa*, Buenos Aires, July 6, 1979, p. 9.

495 IACHR – Report on the Situation of Human Rights in Argentina, p. 2.

496 Memorandum, from Edmundo Vargas Carreño, to Luis Lizondo, Office of Program-Budget, Topic: Incremento de asignación de fondos, Washington, D.C., August 13, 1979 (IACHR files).

497 Besides the wrong spelling of the Commissioner’s names, the Mexican Mario Cantú Leal was mentioned as member of the IACHR. Cantú Leal, however, was elected but Mexico withdrew his nomination later on so he did never become member of the Commission due to “personal reasons”. See *La Prensa*, Buenos Aires, July 23, 1979, p. 11.

498 Interviews.

Peace Prize Winner Pérez Esquivel – who was recently released from prison at the time of the Commission’s presence in the country – confirmed that the junta prepared the detention camps and replaced prisoners before the Commission came.⁴⁹⁹ In fact, the time lapse between July and September could possibly have promoted the armed forces’ endeavors to ‘clean up’ also because after the Executive Secretary’s visit, the junta knew what the IACHR would be investigating and thus was well prepared. Similarly, Acuña/Smulovitz suggest that the junta wanted to use the Commission visit to whitewash its image.⁵⁰⁰

The Commission arrived in Argentina on September 6, 1979 – a year after the Videla-Mondale agreement in Rome. The Commission members Andrés Aguilar, Chairman, Luis Demetrio Tinoco Castro, Marco Gerardo Monroy Cabra, Carlos Dunshee de Abranches, Thomas Farer and Francisco Bertrand Galindo participated in the on-site observation. They were supported by Executive Secretary Edmundo Vargas Carreño and the staff lawyers Edgardo Paz Barnica, Guillermo Fernández de Soto, Manuel Velasco Clark and Robert Norris.⁵⁰¹

In comparison with other on-site observations carried out by the IACHR at that time, the Argentine visit was extraordinarily well prepared. The question remains as to if the exhaustive and detailed *travaux préparatoire* also contributed to the delay of the visit – a suggestion that cannot be entirely excluded.⁵⁰² The Special Commission undertook a variety of activities during its two-week stay in the Republic of Argentina: it conducted interviews with public authorities,

499 Interview with Adolfo Pérez Esquivel, Buenos Aires, June 16, 2000. Nevertheless, Pérez Esquivel considers the visit as helpful for the Argentine victims and the cause of human rights.

500 Carlos H. Acuña/Catalina Smulovitz – Adjusting the Armed Forces to Democracy: Successes, Failures and Ambiguities in the Southern Cone, in: Elizabeth Jelin/Eric Hershberg (Eds.) – Constructing Democracy. Human Rights, Citizenship, and Society in Latin America, Boulder/Oxford 1996, p. 15.

501 The participants of the IACHR investigation received identification cards, which were prepared by the Argentine authorities. The Commissioners had to send a form to the OAS office in Buenos Aires, stating their marital status, passport number and other personal details. Oficina de la Secretaría General de la OEA en Argentina, Buenos Aires; Datos del funcionario de la Comisión Interamericana de Derechos Humanos (form filled by Luis Demetrio Tinoco Castro), from the IACHR files.

502 Accordingly, the former Executive Secretary wrote that in 1979, the IACHR probably carried out the “most complete and exhaustive investigation” hitherto. Vargas Carreño, p. 291.

former presidents, major religious figures, representatives of human rights organizations, political organizations, professional associations (particularly bar associations), trade unions as well as commercial, industrial and business elites. Further, the Commission spoke with foundations and individuals like the famous author Ernesto Sábato, publicist Jacobo Timerman, and representatives of the media. The IACHR Special Commission investigated certain cases, visited detention centers and received 5,580 denunciations – including 4,153 new petitions. In its report, the Commission certified that the junta had cooperated at all times.⁵⁰³

At the second day of the Commission's observation, many Argentines celebrated the victory of the national team at the Junior World Soccer Championship at the Plaza de Mayo. Negative and provocative corals and comments against the Commission's presence in Argentina accompanied the celebrations. Obviously, the soccer triumph helped the junta as it had in 1978.⁵⁰⁴ On the occasion of the IACHR observation, stickers and paper flags provided by the Buenos Aires Provincial Bank were distributed saying "Los argentinos somos derechos y humanos" ("We Argentines are upright and human") – obviously a mockery on the Commission's presence.⁵⁰⁵ Furthermore, members of the Catholic Church criticized the Commission's endeavors.⁵⁰⁶ In contrast, Ernesto Sábato, one of Argentina's most famous and renowned authors, directed a declaration to the IACHR and the press, condemning all forms of violence.⁵⁰⁷ On September 14, militants of the Perma-

503 IACHR – Report on the Situation of Human Rights in Argentina, pp. 2-6.

504 *La Prensa*, Buenos Aires, September 8, 1979, pp. 1/9; *Buenos Aires Herald*, September 9, 1979, p. 3. During the visit, Commission member Monroy Cabra was called from the Supreme Court in Colombia to return to his country in order to comply with his duties as judge. He left on September 9 and came back to Argentina on September 16. This did not affect the Commission's work essentially but must have caused confusion since the Colombian Supreme Court considered Monroy Cabra's 'national' commitment more important than his efforts with an inter-American institution to clarify Argentina's human rights situation. *La Prensa*, Buenos Aires, September 9, 1979, p. 4; *La Prensa*, Buenos Aires, September 17, 1979, p. 5.

505 *Buenos Aires Herald*, September 8, 1979, p. 1.

506 *La Prensa*, Buenos Aires, September 9, 1979, p. 4; *La Prensa*, Buenos Aires, September 12, 1979, p. 4.

507 Sábato stated: "No hay violaciones execrables y violaciones justificables, aunque sean cometidas en nombre de gran ideas, como dice el socialismo, la patria o la justicia social, y sobre todo si son perpetradas en nombre de esas grandes ideas."

nent Assembly of Human Rights demonstrated at the Plaza de Mayo where explosions took place.⁵⁰⁸ This was an incident which helped the junta to portray a dangerous situation.

In general, the newspapers *Clarín* and *La Prensa* defended the military junta and argued that the roots of violence were in the left-wing terrorism of the first half of the 1970s. Further, both newspapers published a 'Testimony of the Truth', an advertisement signed by hundreds that expressed solidarity with the armed forces in charge and refused the judgment of Argentine matters by foreigners.⁵⁰⁹ In addition, former presidents Roberto M. Levingston and General Juan Carlos Onganía disagreed with the interference of the IACHR because they argued human rights problems should be solved by the national government.⁵¹⁰

Unlike the newspapers mentioned above, the English-speaking *Buenos Aires Herald* struck with an unusual approach. While mentioning the actual threat of terrorism, the Herald's editorial defended the Commission because of its reputation. That newspaper went further and stated that the "...country paid a tremendous price for the victory over subversion" and mentioned "...the thousands of people who have disappeared".⁵¹¹ The Buenos Aires Herald considered the Commission visit as helpful to understand the internal 'war' since 1976, although it admitted that only Argentines had to solve their own problems.⁵¹² These commentaries were extraordinarily frank and contributed to the pressure on the Herald's editor, Robert Cox, who was later forced to leave the country.

At the end of the Commission's stay in Argentina, the junta handed over copies of the propaganda document "Terrorism in Argen-

La Prensa, Buenos Aires, September 11, 1979, p. 8; Clarín, Buenos Aires, September 11, 1979, p. 3.

508 La Prensa, Buenos Aires, September 15, 1979, p. 5.

509 La Prensa, Buenos Aires, September 19, 1979, p. 7; Clarín, Buenos Aires, September 19, 1979.

510 Clarín, Buenos Aires, September 12, 1979, p. p. 4; Buenos Aires Herald, September 6, 1979, p. 1. While Levingston spoke with Commissioners, Onganía refused to grant the IACHR a meeting.

511 Buenos Aires Herald, September 7, 1979, p. 10.

512 Buenos Aires Herald, September 11, 1979, p. 10. "But the human rights commission has already, by its very presence, helped Argentines to see the full extent of the problems that must be solved and the suffering that must be eased."

tina”.⁵¹³ By the end of the Commission’s visit, the IACHR refused to meet with the Argentine League of Victims of Terrorism, which resulted in accusations of a lack of partiality of the Commission.⁵¹⁴ The IACHR was charged of being partial due to its omission to investigate terrorist acts committed by left-wing groups. On several occasions, the IACHR members, specifically Chairman Aguilar, tried to explain that such an investigation was not covered by the Commission’s mandate and that it would result in treating governments and terrorist organizations in the same way. However, these reasonable statements were not heeded and the Commission was repeatedly accused for its “bias”.⁵¹⁵ Certainly, an interview with representatives of groups that denounced terrorist attacks would have given the Commission’s report more legitimacy, less vulnerability, and a sense of impartiality. Furthermore, the mentioning of the abuses attributed to left-wing terrorism could have shown the unequal proportions of violence and clarified that the junta’s justification in regard to the terrorist threat lacked substance.

At the end of its stay, the Commission submitted recommendations to the Argentine military junta.⁵¹⁶ Reportedly, the Commissioners were “shocked” by the situation in Argentina. The preliminary recommendations of the Commission mainly emphasized the status of

513 *La Prensa*, Buenos Aires, September 23, 1979, p. 5. That propaganda book prepared by the Junta contains descriptions of many terrorist acts and provides photos, newspaper reports, manifests of the Montoneros and sometimes other sources. The publication always seeks to portray the “subversion” as especially disgusting and cowardly – also the description and emphasizing of connections of Argentine terrorists to international Marxism (Nicaragua, Cuba, USSR) was one goal. See: *Poder Ejecutivo – El terrorismo en la Argentina – Evolución de la delincuencia terrorista en la Argentina*, Buenos Aires, Octubre 1980.

514 *La Prensa*, Buenos Aires, September 20, 1979, p. 13.

515 In an interview conducted by the author, former Foreign Minister Oscar Montes still rejected this explanation presented by the Commission because it was perceived as “discriminatory”. Interview with Oscar A. Montes, Buenos Aires, May 17, 2000.

516 Two days before the on-site visit ended, the president of the Venezuelan Congress expressed his moral support for the Commission by sending a letter to Aguilar in Buenos Aires. This was a clear sign of Venezuela’s stand on human rights and the IACHR and a vivid support to show that besides the US there were also Latin American nations that sought to promote those rights. Letter from Godofredo González, Presidente del Congreso de la República de Venezuela, to Andrés Aguilar, Presidente CIDH, OEA, República Argentina, Buenos Aires; Caracas, September 18, 1979 (IACHR files).

the disappeared, requested detailed information on their whereabouts, required them to free minors of detained persons or those born in detention, and ensure the right of choice to leave the country. Further, the recommendations called the junta to investigate torture charges and other denunciations of illegal interrogation methods, to improve notably the prison conditions, to assure due process guarantees, and to study the military jurisdiction by a commission of jurists.⁵¹⁷ In reply, the Minister of Interior, General Albano Harguindeguy, declared that Argentina had nothing to conceal and condemned “infamous lies like the existence of concentration camps”. Further, Harguindeguy mentioned the history and tradition of Argentina, which put it among the most advanced nations worldwide in regard to human rights.⁵¹⁸

The visit of the IACHR was judged as one of tremendous impact because it drew again international attention to the situation in Argentina.⁵¹⁹ During its presence in the country and afterwards, the Commission’s exchange with local human rights groups also helped the latter to gain more space in the Argentine society.⁵²⁰ Only a week after the Commission had left Argentina, a terrorist bomb attack threatened Economy Planning Minister Guillermo Walter Klein Jr. This act of violence provoked a new debate on the justification of the governmental measures against terrorism.⁵²¹ The IACHR received press material from the Foreign Ministry on the assault to influence its findings on the human rights situation in Argentina.⁵²² In October 1979, at the OAS General Assembly in La Paz, Foreign Minister Pastor again denied the existence of concentration camps and systematic exterminations and rejected “lectures from outside”.⁵²³ In January 1980, the Ar-

517 IACHR – Report on the Situation of Human Rights in Argentina, pp. 7/8.

518 *La Prensa*, Buenos Aires, September 21, 1979, p. 1. The newspaper’s front page headline cited the Minister: “Argentina no tiene nada que ocultar”.

519 *Washington Post*, September 21, 1979, p. A25.

520 García Delgado/Palermo, p. 414. Juan Justo, a former prisoner during the dictatorship, judged that after the harsh period between 1976 and 1980, the situation improved after the IACHR visited the prisons during its on-site investigation – clearly a tribute to the Commission. Marchak/Marchak, p. 136.

521 *Buenos Aires Herald*, September 27, 1979, p. 1.

522 Letter from Commodore Carlos R. Cavandoli, Subsecretary of Foreign Relations, to Andrés Aguilar, Buenos Aires, November 6, 1979 (IACHR files).

523 OEA/Ser.P/IX.0.2, 3 noviembre 1980, Volumen II, Parte I, Período Ordinario de Sesiones, La Paz, Bolivia, del 22 al 31 de octubre, 1979, Actas y Documentos,

gentine junta was apparently shaken by the still secret IACHR report. Particularly the naming of perpetrators of human rights abuses among the armed forces caused fear because it was perceived as a potential threat to the military's integrity.⁵²⁴

The IACHR Report on the situation of human rights in Argentina was a product of the entire Commission. Executive Secretary Vargas Carreño and staff lawyer Edgardo Paz Barnica had drafted the first version, which subsequently was exhaustively reviewed by the Commission. The critical tone and the extensive chapters of the document shocked Argentina's junta.⁵²⁵ The Report did not mention the circumstances under which the Argentine government's decision to allow the observation *in loco* was granted.⁵²⁶ First, the document described the political and legal system in Argentina, stating that since 1930 there had been a continuing instability and an increasing terrorist violence "by the extreme left and the extreme right" in the last ten years. The military takeover in March 1976 was depicted as an alteration of the constitutional system and also of human rights, though referring to "the validity of Christian moral values, national tradition and the dignity of the Argentine" and "a full enforcement of the juridical and social system."⁵²⁷ The main argument of the military government, which linked the human rights reality to the need to repress terrorism and subversion, was countered by the Commission as follows:

"Each government that confronts a subversive threat must choose, on the one hand, the path of respect for the rule of law, or, on the other hand, the descent into state terrorism."⁵²⁸

Correspondingly, the Commission also referred to one main complaint brought up before and during its on-site observation: Why did the IACHR not investigate terrorist acts? The Commission Report again explained that it was not its mandate and that such a procedure would give those terrorist groups an "equal footing with governments" and

Volumen II, Primera Parte, Actas Textuales de las Sesiones Plenarias y de la Comisión General, p. 319.

524 Washington Post, January 23, 1980, p. A24.

525 Guest, p. 177.

526 IACHR – Report on the Situation of Human Rights in Argentina, p. 1.

527 IACHR – Report on the Situation of Human Rights in Argentina, p. 18.

528 IACHR – Report on the Situation of Human Rights in Argentina, pp. 23-25, 27.

further provides them publicity.⁵²⁹ In regard to the violence employed by terrorists and State agents, the IACHR concluded that the State forces did more than match the terrorist violence, "...resulting in serious abuses incurred in its attempt to suppress the subversion by dispensing with all moral and legal considerations."⁵³⁰ This comment would have had a more serious impact if it were accompanied by statistical material – although this represents an extremely difficult subject particularly in regard to human rights violations or violent acts. Further, the IACHR Report on Argentina considered the declaration of a state of siege necessary under corresponding circumstances, but this would require guaranteeing the basic standards like due process, right to life and personal integrity, according to the constitutional rights. In another occasion, the document recommends "weeding out sadists and psychopaths".⁵³¹ In this case, strong language was used, which obviously was employed in connection to convincing testimonies about cruel mistreatments and torture. The question arises whether the IACHR could use such unequivocal statements mainly based on testimonies.⁵³²

The Special Report did not include a reference to women's rights or the particular human rights situation of women.⁵³³ However, the IACHR document provided a detailed and thoughtful chapter on the forced disappearances as a method to prevent the application of the legal provisions regarding personal freedom, physical security, dignity and human life itself.⁵³⁴ For the Commission, the disappearances constituted the most serious human rights problem in Argentina.⁵³⁵ When

529 "In summary, those who attack the Commission for not accepting denunciations concerning terrorist acts committed by subversive groups, not only ignore the legal norms applicable to bodies such as the IACHR, but implicitly seek to elevate the international status of such groups and to help their propaganda." IACHR – Report on the Situation of Human Rights in Argentina, p. 25.

530 IACHR – Report on the Situation of Human Rights in Argentina, p. 134.

531 IACHR – Report on the Situation of Human Rights in Argentina, p. 27.

532 Although the findings later were proved to be correct, the judgment could not claim complete reliability at that time.

533 The report, however, names the personal consequences for the relatives of the disappeared – economic, social, psychological and personal problems for spouses, children etc. Ibid., p. 137.

534 IACHR – Report on the Situation of Human Rights in Argentina, p. 54 (a reference to the Commission's 1976 Annual Report).

535 IACHR – Report on the Situation of Human Rights in Argentina, p. 116.

the report referred to the term 'war' used by the military junta to describe its struggle against terrorist subversion, the word was put in quotation marks – a clear sign for the Commission's doubts.⁵³⁶ Furthermore, the IACHR report also dealt with the judiciary, the public opinion and the Catholic Church. Moreover, the Commission's study criticized the laws on the disappeared.⁵³⁷ The Inter-American Commission expressed its opinion on these rights, which were described by the junta as practical measures to help orphans and other relatives.⁵³⁸ The IACHR concluded that most of the disappeared were dead.⁵³⁹

The report on the human rights situation in Argentina also described unlawful use of force and torture as systematic, accompanied by impressive testimonies of former prisoners. Further, the rights to a fair trial, due process of law, freedom of opinion, expression and information as well as labor, political and religious rights were covered by the IACHR document. In relation to religious rights, the report criticized the prohibition and treatment of Jehovah's Witnesses, but

536 "This campaign [against subversion, K.D.] unleashed for the purpose of totally annihilating the subversive movement, had its most sensitive, cruel and inhuman expression in the thousands of disappeared persons, today presumed dead, whom it left in its wake." IACHR – Report on the Situation of Human Rights in Argentina, p. 134.

537 The "Law on Presumption of Death because of Disappearance", issued on September 12, 1979 during the IACHR's presence in Argentina, enabled relatives and the State to declare a disappeared person's death. This law, together with the "Law on Welfare Benefits where a person is absent" (August 28, 1979) was object of the Commission's criticism. Among other critical comments, the IACHR stated that both laws referred to areas, which were usually handled under the Civil Code. IACHR – Report on the Situation of Human Rights in Argentina, pp. 126-129.

538 "In the opinion of the IACHR, the fundamental question is one of ascertaining and communicating in a timely manner with the family members on the situation of the disappeared. It is necessary to establish beyond any doubt whether these persons are still alive or dead; if they are alive, it is necessary to know where they are; if they are dead, it is necessary where, when and under what circumstances they lost their lives and where their remains are buried." In general, the Commission expressed its concern in regard to those laws and mentioned that the one on the presumption of death, among other aspects, included the risk that "...family members no longer have any right to act on behalf of the person who legally is considered dead." IACHR – Report on the Situation of Human Rights in Argentina, p. 133.

539 IACHR – Report on the Situation of Human Rights in Argentina, p. 137.

did not confirm a systematic policy of anti-Semitism, although there were reported acts against members of the Jewish community. The question whether the junta was carrying out a systematic anti-Semitic policy or not still remains.⁵⁴⁰ Andersen and Heinz conclude that Jews were disproportionately affected by the repression.⁵⁴¹ Jewish human rights organizations like B'nai B'rith and also individual complainants from Jewish groups or Jewish individuals from Argentina or the United States directed letters and petitions to the IACHR between the years of 1979-81.⁵⁴² The controversial case of Jacobo Timerman, an Argentine-Jewish publisher, also received attention in the United States. Falcoff considers that Timerman was not detained because of his religion or his opposition against Argentina's security forces, but because of the discovery of his business partner's relations to an important left-wing guerrilla group.⁵⁴³ Generally, it can be assumed that

540 IACHR – Report on the Situation of Human Rights in Argentina, pp. 199, 219, 235, 239, 245, 251-254. In reference to several interviews, Marchak did not reach the conclusion that Jews had been affected more than other social groups either. Marchak/Marchak, pp. 13/14. In the US, attacks against Jews as well as the distribution of Nazi literature were well observed by Jewish groups. See: Hearings Before the Subcommittee on International Organizations of the Committee on International Relations. House of Representatives, Ninety-Fourth Congress, Second Session, September 28 and 29, 1976: Human Rights in Argentina, pp. 59-63; María José Moyano – The “Dirty War” in Argentina: Was it a war and how dirty was it?, in: Tobler/Waldmann (Eds.), p. 51.

541 Andersen stated that the Jewish community – Buenos Aires has hosted the second largest Jewish community outside Israel after New York – was particularly affected. Martin Edwin Andersen – Dossier Secreto. El mito de la guerra sucia, Buenos Aires 1993. Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983, in: Heinz/Frühling, p. 650. See footnotes 23 and 24, *ibid.* Likewise, the Ambassador of Israel in Argentina emphasized that the Jewish community was comparably more affected by the repression than other groups. Lerman provides that Jews only constituted 0.8 percent of the Argentine population but represented 12.43 percent of the victims during the dictatorship. See: 1949/1999 Israel-Argentina: Encuentro entre 2 Naciones, 50 años de intercambio político, económico, cultural y científico, edited by the Instituto Cultural Argentino-Israeli/Embassy of Israel in Argentina (texts by Gabriel D. Lerman), Buenos Aires 1999, pp. 186/187.

542 IACHR files.

543 Mark Falcoff – The Timerman Case, in: Howard J. Wiarda (Ed.) – Human Rights and U.S. Human Rights Policy. Theoretical Approaches and Some Perspectives on Latin America, American Enterprise Institute for Public Policy Research, Washington, D.C. 1982, p. 76. Falcoff concluded that for most of the largest Jew-

a traditional anti-Semitism was evoked during the “dirty war,” although the question as to whether the governmental policy itself was systematically anti-Semitic or not still seems to be unproven.⁵⁴⁴

In its conclusions, the Inter-American Commission on Human Rights found that the most fundamental rights such as the right to life, to personal freedom, personal integrity and security and to a fair trial and due process were affected by the Argentine government’s policy. Therefore, the IACHR recommended investigating deaths attributed to State forces, to follow the preliminary recommendations on disappearances (as noted above), the prevention of new disappearances and creation of a central register of detainees, and a possible lifting of the state of siege because according to the government, the ‘war’ was over. Further, the Commission urged the government to treat prisoners well and investigate torture and mistreatment charges. In addition, the junta should guarantee a due process as well as legal remedies like Amparo or Habeas Corpus. Finally, the recommendations also concerned the rights of opinion, expression and information, and labor, trade union association, political and religious rights, and called for proper conditions for human rights groups to let them do their work.⁵⁴⁵

Unlike other observers, a former member of the IACHR finds that the Argentine report was not as strong as it should have been.⁵⁴⁶ In general, the IACHR Report on Argentina mainly refers to human rights violations committed in foregoing years. The conclusion obtrudes that the Commission possibly felt sort of ‘guilty’ for not having published a Special Report on that country during the worst years and therefore decided to prepare a harsh document mainly referring to cases that occurred between 1976 and 1978.

In December 1979, the Argentine report was adopted by the Commission and sent to the government.⁵⁴⁷ This meant that the

ish communities in the world, Argentina “...was not an intolerable place to live.” Ibid., p. 74.

544 See Bureau of Intelligence and Research, Department of State – Argentina: Six Months of Military Government, Report No. 603, September 30, 1976, p. 5. Memorandum of Conversation, Department of State, Secret. Subject: Secretary’s Meeting with Argentine Foreign Minister Guzzetti, October 7, 1976, Secretary’s Suite, Waldorf Astoria, New York.

545 IACHR – Report on the Situation of Human Rights in Argentina, pp. 263/264.

546 Interviews.

547 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 26.

Argentine junta would not be able to blame the Commission for the lack of time to consider the document as many other governments had done before. Argentina released the conclusions of the IACHR report several days before the official presentation of the report by the Commission. The Argentine government also published its rejecting statement. The early release by the Argentine junta sought to mitigate the report's impact of the long-awaited study. In a booklet regarding "critical observations and comments" by the government, the junta argued that the Commission's Special Report did not take into account the situation before 1976 and that it did not honor the changed situation in Argentina. The Argentine government stated that human rights could not be applied to every country at all times with the same categories – a judgment that implicitly refused the 'universal' character of human rights in the style of circumstantial relativism. Moreover, the comments declared "in Argentina, there has not been any generalized violation of human rights" and further rejected any accusation of this nature. The junta described the IACHR document as partial. Its contents were said to be sensationalistic and to have had an emotive impact. Indeed, one might criticize the Commission's use of moving testimonies because it should be considered first of all a report of a juridical nature.⁵⁴⁸ In general, the government's observations presented a strong refusal of the Commission report.⁵⁴⁹ As in foregoing publications on the human rights situation in Argentina, the military government enclosed an annex with terrorist acts, which included more than thousand crimes attributed to subversives.

The IACHR found that since the on-site observation, the human rights violations and the forced disappearances had been notably decreased.⁵⁵⁰ Keck/Sikkink suggest that the junta, after realizing that the Commission could neither be co-opted nor confused, decided to end the practice of "disappearances", freed political prisoners and reestablished a certain degree of political participation.⁵⁵¹ This opinion attributes an extraordinary impact to the Commission's performance in the

548 On the other hand, the inclusion of those individual reports gave the document a sort of 'humane touch' beyond the juridical descriptions.

549 Observaciones y comentarios críticos del Gobierno argentino al Informe de la CIDH sobre la situación de los derechos humanos en Argentina, Buenos Aires, April 1980, pp. 5, 13, 14, 22, 30, 107-111.

550 Washington Post, April 20, 1980, p. A18.

551 Keck/Sikkink, p. 109.

Argentine case. Likewise, Heinz determines that because of the IACHR report and the better information provided by other organizations, "...the wall of silence began to crack."⁵⁵² In accordance, Adolfo Pérez Esquivel attributes a "multiplying" and "officializing" factor to the Commission's visit and report.⁵⁵³

The junta did not allow the distribution of the entire report. Guest assumes that the Argentine OAS representative in Buenos Aires, Roberto Monti, helped the junta to keep the report from being published in Argentina. The IACHR files show that the OAS Mission in Buenos Aires received reports but did not distribute them to the NGOs that were the supposed recipients. Finally, Emilio Mignone smuggled some 500 copies from Washington to Argentina.⁵⁵⁴ Guest holds that the military junta suddenly realized that the IACHR document was one of its most grave diplomatic setbacks since the coup.⁵⁵⁵ Andersen equivocally writes that the 'OAS' mentioned human rights abuses in Argentina.⁵⁵⁶ It was merely the OAS organ IACHR and not the whole organization – a necessary distinction that became obvious at the General Assembly in November 1980.

Argentina's military rulers faced the threat of being exposed at the General Assembly in 1980 because of the critical IACHR report. Notwithstanding, the international context had notably changed – this meant a decisive advantage for the junta in Buenos Aires. In 1979, Soviet troops had invaded Afghanistan and provoked a US grain embargo on the USSR. Moreover, Vietnam had marched into Kampuchea, there was an explosive turmoil in Central America, and the Islamic Revolution in Iran worried the US. In the same year, hostages were taken at the US Embassy in Teheran and the tensions between Iran and Iraq increased.⁵⁵⁷ Further, the second oil price shock pro-

552 Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983, in: Heinz/Frühling, p. 736.

553 Interview with Adolfo Pérez Esquivel, Buenos Aires, June 16, 2000.

554 Note from Emilio Fermín Mignone, to Edmundo Vargas Carreño, Buenos Aires, October 18, 1980. In that note, Mignone also stated that Monti said he had not received the 130 reports in June but refused to speak with Mignone.

555 Guest, p. 177, p. 501: footnote 41.

556 Andersen, p. 334.

557 Dumbrell holds that the US foreign policy issue number one was the SALT II process and the administration's fight for the Senate's ratification of it. When the US embassy was captured by radical hostage-takers, the crisis in Teheran became the major topic of US foreign relations. See Dumbrell, p. 6.

voked a dramatic decline of Carter's popularity in the United States. As a result of the revived East-West tensions also provoked by the Soviet invasion in Afghanistan and the Sandinista revolution, President Carter responded with the boycott of the Olympic Games in Moscow in 1980. This scenario meant that US foreign policy now had more 'traditional' problems at the international level and found itself in a less comfortable situation to promote human rights. On the other hand, Washington's embargo on the Soviet Union as a punitive measure with regard to the Afghanistan invasion could only have some effect if the other major exporters of grain cooperated, namely Australia and Argentina. Moreover, the United States sought to convince Argentina to accept the Tlatelolco Treaty to ban nuclear weapons from the region. This scenario potentially constituted a huge advantage for the Argentine regime.⁵⁵⁸

In addition, the priority of US security policies over human rights also affected Patricia Derian's position, who had been one of the most vigorous human rights advocates.⁵⁵⁹ Apparently, the career diplomacy successfully undermined the efforts of the human rights office, particularly in 1980.⁵⁶⁰ As the Congressional pressure on human rights in US foreign policy also decreased, Carter seemed to regard human rights as "a luxury that he could not afford."⁵⁶¹

Jimmy Carter lost the presidential elections in November 1980 to his Republican challenger, Ronald Reagan. As Reagan was considered extremely conservative and consequently more sympathetic with right-wing regimes, this meant a vital advantage for the junta in Buenos Aires. In general, the US relations with Argentina were contradictory: while Carter and Derian criticized the junta for its poor human

558 Although it might seem that the Argentine junta cooperated massively with the Soviet Union – a confusing and almost bizarre issue because in Argentina any left-wing sympathizer was prosecuted – the author agrees with Guest who describes the relations as more of a practical nature. As mentioned before, besides the human rights issue, and the grain export to the USSR, there were no real good relations between Argentina and the Soviet Union, also due to the fact that the junta did not want to jeopardize its relationship with the US – for Argentina the more important superpower during the East-West conflict. See Guest, p. 181.

559 Guest, pp. 182, 183.

560 Dumbrell, p. 181.

561 Guest, p. 184.

rights record, the State Department was divided and the US Department of Treasury more sympathetic with the military rulers.⁵⁶²

On the other hand, the situation in the region also had shifted: a political change in Venezuela and tensions between Venezuela and Colombia affected their stand on human rights issues at the OAS. Further, the military coup in Bolivia ended with a situation in which the Andean nations were no longer unified to defend human rights in the OAS. Both developments led to a leadership vacuum for human rights matters in Latin America. Nevertheless, both Venezuela and Colombia still supported the Commission. The Commission's highly recognized performance during the Colombian hostage crisis helped to back the IACHR before the General Assembly. In early 1980, the IACHR had successfully intermediated and settled a kidnapping in the Dominican Embassy in Bogotá by M-19 guerrillas.⁵⁶³ Accordingly, it was the Colombian delegation in particular that emphatically supported the Commission during the session.⁵⁶⁴

Before the General Assembly met, the IACHR received numerous individual letters encouraging the Commission to put the Argentine case on the Assembly's agenda. Some of the letters were very touching and were mainly sent from Argentina and Canada, where a campaign to force the topic on the meeting's agenda had been successful.⁵⁶⁵ The Inter-American Commission on Human Rights held its 51st period of sessions at the time when the OAS Assembly gathered. The IACHR received the president of the Argentine human rights NGO

562 Furthermore, the Exim-Bank did business as usual with Argentina and the US listed Argentina as "principal beneficiary" of the US Generalized System of Preferences. "In 1980 Argentina exported a total of \$231 million, duty free, to the United States, a sum that could not possibly be justified in terms of protecting the U.S. trade balance..." Marchak/Marchak, pp. 230/231. See chapter III. 2.

563 See G. E. do Nascimento e Silva – O papel da Comissão Interamericana de Direitos Humanos no sequestro do diplomatas em Bogotá, in: OEA (Ed.) – Direitos Humanos nas Américas, Washington, D.C. 1984, pp. 319-329.

564 Interview with Dean Tom Farer, Denver/Colorado, August 30, 1999.

565 IACHR files. Furthermore, even the Secretary General of the British Labour Party and the Chairman of the Parliamentary Human Rights Group sent animating letters to the IACHR. Letter from Ron G. Hayward, General Secretary, The Labour Party, to Edmundo Vargas Carreño, London, November 10, 1980; Letter from Lord Avebury, Chairman, Parliamentary Human Rights Group, House of Commons, to Edmundo Vargas Carreño, London, November 5, 1980 (IACHR files).

Service for Peace and Justice (SERPAJ), Nobel Peace Prize Winner Adolfo Pérez Esquivel who did not attend the General Assembly.⁵⁶⁶

Before the OAS Meeting took place, the Argentine press discussed the strategic scenario of potential vote results on the Argentine report. *La Prensa* considered Argentina's announced withdrawal from the OAS unlikely, because of Reagan's electoral victory and the assumption that twelve to fourteen Member States would vote against a condemning resolution against Argentina.⁵⁶⁷ Nevertheless, the Argentine Foreign Ministry called the diplomatic corps for a meeting before the OAS meeting took place.⁵⁶⁸ As early as April 1980, the Argentine Foreign Minister urged several Latin American OAS Members to support his government against the IACHR accusations. Apparently, it was considered that the Report on Cuba not be presented at the General Assembly, and as a result, the Argentine Foreign Minister advocated for El Salvador's diplomatic support in not presenting the Argentina report either.⁵⁶⁹

At the OAS General Assembly in 1980, attention was focused on the Argentine Report.⁵⁷⁰ The Argentine press reported extensively on the Assembly and covered every detail of the developments in Washington. During the sessions, Argentine human rights groups attended the meeting and, according to a former Argentine diplomat, contributed to a "very special political atmosphere." Foreign Minister Carlos W. Pastor publicly reconsidered the option of reducing his country's participation in the OAS, specifically in relation to the present financial crisis of the organization.⁵⁷¹ In an article published in 1996, Pastor

566 IACHR – Annual Report of the IACHR 1980-1981, OEA/Ser.L/V/II.54, doc. 9 rev. 1., 16 October 1981, Original: Spanish, p. 7.

567 Waldmann, p. 946; Torre/de Riz, p. 167; *La Prensa*, Buenos Aires, November 12, 1980, p. 1.

568 Pastor, p. 290.

569 Letter from the Minister of Foreign Relations and Cult of Argentina to Dr. Fidel Chávez Mena, Foreign Minister of El Salvador, Buenos Aires, April 20, 1980. The copy of that letter contains the handwritten comment: "Te sugiero consultar al Dr. Fco. Bertrand Galindo". (I suggest that you consult Dr. Francisco Bertrand Galindo). From the files of the Salvadoran Foreign Ministry archives.

570 Although, also the IACHR Annual Report reported several cases of violations in Argentina, the Special Report on Argentina monopolized the delegations' attention. IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, pp. 38-58, 70-75.

571 *La Prensa*, Buenos Aires, November 15, 1980, p. 1; *Buenos Aires Herald*, November 15, 1980, p. 11; *Clarín*, Buenos Aires, November 21, 1980, p. 6. Besides

wrote that “a war is something cruel and human rights are violated”.⁵⁷² Pastor, who was General Videla’s brother-in-law, was a member of the armed forces who reportedly preferred to retire from the meeting rather than to negotiate the IACHR’s criticism. When the General Assembly met, OAS employees organized a protest and a strike for higher salaries to equal those of the United Nations. This accentuated the threat of Argentina’s withdrawal from the OAS and the reduction of financial support that this would imply.

After US President Carter’s last speech at the OAS plenary session in which he stressed his human rights policy, Argentina’s Minister of Foreign Affairs, Carlos Washington Pastor, stood up like the other delegates but did not applaud as a sign of protest against Carter’s endeavors.⁵⁷³ After emphasizing the nonintervention principle, Pastor himself blamed the United States – without mentioning the US by name – for its divisive policy that counteracted instead of contributing to the regional development. Further, the Argentine Foreign Minister stated that the “war” in Argentina was won and that as a result, democracy would be installed. Moreover, Pastor threatened that if the General Assembly were used for political ends, his government would reconsider its forms of cooperation.⁵⁷⁴

The chairman of the IACHR, Tom Farer, presented the Report on Argentina before the First Committee. According to Farer, there was total silence when he exposed the report.⁵⁷⁵ Farer also mentioned two cases to illustrate the human rights reality in Argentina and referred to the media’s self-censorship in Argentina between 1976 and 1979, which contrasted with the broad coverage of the Commission’s visit.⁵⁷⁶ The numerous personal letters that had called the Commission

the United States (66%), Brazil and Mexico (each 9,5%), Argentina was one of the main contributors to the OAS budget with 8 percent.

572 Pastor, p. 291.

573 *La Prensa*, Buenos Aires, November 20, 1980, p. 1.

574 OEA/Ser.P/IX.0.2, 3 noviembre 1980, Volumen II, Parte I, Período Ordinario de Sesiones, La Paz, Bolivia, del 22 al 31 de octubre, 1979, Actas y Documentos, Volumen II, Primera Parte, Actas Textuales de las Sesiones Plenarias y de la Comisión General, pp. 55-59.

575 Interview with Dean Tom Farer, Denver/Colorado, August 30, 1999.

576 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II: Décimo Período Ordinario de Sesiones, Washington D.C., del 19 al 27 de noviembre de 1980, Primera Comisión, pp. 70-84. Farer stated that Argentina’s Foreign Minister, Carlos W. Pastor looked at him “...and obviously saying to himself, if we only had you

to stand up for human rights in Argentina might also have influenced his emphatic presentation.

In the first days, the Argentine delegation was joined by Chile and other Member States, which like Argentina threatened to withdraw from the organization if the national sovereignty of States was not respected satisfactorily.⁵⁷⁷ In combination with the existent financial crisis of the OAS that was emphasized through the protesting OAS employees, these threats could have been perceived as a substantial danger for the organization's economic survival. Several delegations, mainly those of military regimes like Argentina, Chile, Bolivia and Guatemala, referred to nonintervention while stressing that the human rights issue constituted interference in domestic affairs. Those governments complained of the "politicization of the OAS".⁵⁷⁸

The fact that in bygone years the IACHR had accused numerous Member States in its Special and Annual Reports resulted in a hostile atmosphere created by military governments, which were additionally encouraged to express their criticism by Reagan's victory at the polls.⁵⁷⁹ Apparently, the accused governments saw the General Assembly as the last battle on human rights. Parts of the US delegation were determined to fight for a final decisive resolution on behalf of human rights before the Reagan administration took office.

The Argentine newspapers indicated an increasing confrontation between the United States and Argentina, though several unofficial meetings between representatives of both States tried to solve existing disagreements. When it seemed to be clear that the US would not gather the fourteen votes necessary to condemn Argentina, the US Secretary of State, Edmund Muskie⁵⁸⁰ and Argentina's Foreign Minis-

in one of our clandestine detention centers, we would know what to do." Interview with Dean Tom Farer, Denver/Colorado, August 30, 1999.

577 *La Prensa*, November 21, 1980, p.1; *La Prensa*, November 25, 1980, p. 2. Bolivia, Paraguay and Uruguay – all Member States with right-wing military governments at that time – also announced to leave the OAS, if necessary.

578 *La Prensa*, Buenos Aires, November 22, 1980, p. 2.

579 See Torre/de Riz, p. 167.

580 After Cyrus Vance had opposed a "disastrous hostage rescue mission" at the US embassy in Teheran in April 1980, which also highlighted the difficult relation to Carter's Security Advisor Brzezinski, Edward Muskie replaced Vance as head of the State Department. Dumbrell, pp. 7/8.

ter Carlos W. Pastor, decided to negotiate.⁵⁸¹ Despite these informal talks, the US delegation presented a draft resolution, which employed a direct tone, singling out each accused government which led to a confrontation in the Committee on Juridical and Political Affairs. *La Prensa* perceived the IACHR's Chairman, Tom Farer, as being ready to fight for a mentioning of Argentina in the final resolution.⁵⁸² The *Buenos Aires Herald* wrote "Argentina, US collide at OAS" and on November 26, *La Prensa* described the differences between Argentina and the US on the human rights question at a "crisis".⁵⁸³ Indeed, surprisingly enough, the US had returned to its original stand on human rights. This is even more astonishing because the US paper was presented when five governments had announced their possible withdrawal from the meeting if the resolution were to name particular Member States.⁵⁸⁴ The Venezuelan delegation proposed a resolution that contained the names of the accused governments, followed by fierce negotiations on the resolution text.⁵⁸⁵ In the course of the discussion, various nations – Argentina, Bolivia, Chile, Paraguay and Uruguay – threatened to leave the General Assembly meeting.⁵⁸⁶ These threats created pressure in the meeting to soften the position taken by the IACHR, and the delegations of the United States and Venezuela.

After some controversies, the Uruguayan proposal to present all IACHR reports at once, and not disjointedly as planned, was ac-

581 *La Prensa*, Buenos Aires, November 23, 1980, pp. 1, 2. These conversations were overshadowed by an inner struggle within the State Department between a more conservative faction and human rights advocates like Warren Christopher and Patricia Derian. *Clarín*, Buenos Aires, November 23, 1980, p. 4.

582 *La Prensa*, Buenos Aires, November 25, 1980, pp. 1, 2; *Buenos Aires Herald*, November 25, 1980, p. 1.

583 *Buenos Aires Herald*, November 25, 1980, p. 1; *La Prensa*, Buenos Aires, November 26, 1980, p. 4.

584 At the same time, the US and Soviet delegations clashed over human rights at the Conference on Security and Cooperation in Europe in Madrid. *Buenos Aires Herald*, November 25, 1980, pp. 1, 20.

585 *Buenos Aires Herald*, November 26 and 27, 1980, p. 1. In regard to the human rights issue, the Venezuelan delegation went even further than the US by questioning the usefulness of the OAS at all.

586 Already in 1971, six countries left a conference on terrorism in protest against the "soft attitude" taken by the meeting. *La Prensa*, Buenos Aires, November 27, 1980, pp. 1, 2.

cepted.⁵⁸⁷ The US position had been to handle the Annual Report of the IACHR and each of its Special Reports separately.⁵⁸⁸ However, Argentina's favored strategy to discuss all human rights topics at the same time as agenda point 21 eventually succeeded. This tactic had already been carried out by Chile in 1976. A Working Group was set up to prepare a draft resolution on the IACHR reports. This group's discussions and the following discourse in the First Committee concluded not before dawn of the General Assembly's last day of sessions. Tough negotiations took place within and outside the First Committee on Political and Juridical Affairs. The resolution text dealing with the Commission's Annual Report and its Special Reports on Argentina, Cuba and Haiti was subject of an authentic diplomatic battle uninterruptedly lasting more than 24 hours.

In the end, conversations between US Assistant Secretary of State for Inter-American Affairs, William Bowdler, and Carlos Pastor found a 'compromise'.⁵⁸⁹ Finally, a resolution was passed that just "took note" of the IACHR reports and only Bolivia was singled out and condemned with a separate resolution.⁵⁹⁰ After its initial resistance against any mentioning of Argentina by name, the Argentine delegation made the concession that the resolution referred to the "IACHR Special Report on Argentina". Thus, the General Assembly reached a "compromiso latinoamericano,"⁵⁹¹ which consisted of a limited noting of the reports but further mentioned the observations of the corresponding governments.⁵⁹² However, the US insisted on an additional article requesting the governments to comply with the recommendations of the IACHR, which provoked a strong opposition from Argen-

587 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II: Décimo Período Ordinario de Sesiones, Washington D.C., del 19 al 27 de noviembre de 1980, Primera Comisión, pp. 36-38.

588 La Prensa, Buenos Aires, November 20, 1980, p. 4.

589 Clarín, Buenos Aires, November 28, 1980, p. 1. *Clarín* titled "Aceptaron en la OEA la tesis argentina."

590 AG/RES. 484 (X-0/80): Seguimiento de la situación de los derechos humanos en Bolivia.

591 A former Argentine diplomat states that it was less the US but rather Latin American States that discussed the issue because the US stand on human rights at that moment was considerably difficult.

592 AG/RES. 510 (X-0/80): Annual Report and Special Reports of the Inter-American Commission on Human Rights.

tina.⁵⁹³ *La Prensa* mentioned the influence of the Pentagon and the Inter-American Defense Council who reportedly pressed the US delegation to abandon its position. The newspaper found that the resolution was “the best the junta could get.”⁵⁹⁴ The final resolution represented a watered-down version, but the supporters of the IACHR – besides the US, other democracies – tried to include two articles which obviously referred to Argentina: article 12 called for an immediate end of forced disappearances in those countries where it may occur, and article 13 recommended to the Member States to establish central records to account detained persons.⁵⁹⁵ Clearly, the mere “taking note” of the report on Argentina in the resolution was considered a diplomatic victory for the Argentine junta. In the foregoing years during the Carter administration, governments that had been subject of a Special Report of the IACHR were explicitly mentioned in the respective OAS resolutions. But in 1980, Argentina’s diplomatic maneuvers and its threat to withdraw from the organization if it was mentioned in the resolution text, succeeded.⁵⁹⁶

The delegates of Argentina and the United States were the last speakers in the First Committee. Assistant Secretary of State, William Bowdler, expressed his conformity with the consensus and said – in Spanish – in one of his last contributions that “it was a pleasure for me to have participated in this debate.”⁵⁹⁷ The ‘consensus’ was accepted, but harshly criticized for its weakness by the representatives of Grenada, Barbados and Jamaica. Nicaragua was worried too about the final document and the Venezuelan representative, Hilarión Cardozo, stated that human rights could not be subject of negotiations. Mexico’s Permanent Representative, Rafael de la Colina, described the resolution as weak.⁵⁹⁸ Also, Oliver Jackman, the Barbadian represen-

593 Clarín, Buenos Aires, November 27, 1980, p. 2.

594 *La Prensa*, Buenos Aires, November 28, 1980, p. 1.

595 Washington Post, November 28, 1980, p. A4.

596 Guest, p. 239. After his return to Argentina, Pastor denied that his government had considered to withdraw from the OAS if the General Assembly had adopted a resolution mentioning Argentina by name, it had only warned to withdraw its economic support. Buenos Aires Herald, November 29, 1980, p. 1.

597 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II: Décimo Período Ordinario de Sesiones, Washington D.C., del 19 al 27 de noviembre de 1980, Primera Comisión, pp. 280, 281, 282, 288, 301.

598 Nevertheless, the Mexican delegation was considered to have played a decisive role. De la Colina, the old-experienced diplomat of the OAS, headed the negotia-

tative who later on became member and chairman of the Commission, showed his dissatisfaction. In contrast, Uruguay, Brazil and Paraguay still criticized the IACHR and expressed that they would have preferred a more global resolution.⁵⁹⁹ A former Argentine OAS diplomat called the resolution “pretty acceptable” for Argentina and “very acceptable” for the Commission. As Foreign Minister Pastor recalls, the ambassadors of Brazil, Mexico and Peru were supportive, while Argentina received “extreme solidarity” from the Foreign Ministers of Chile, Bolivia, Uruguay and Paraguay.⁶⁰⁰ According to Pastor, Secretary General Alejandro Orfila sent a letter to the Argentine Foreign Ministry, saying that he did not doubt that the meeting was one of the greatest successes of Argentine diplomacy.⁶⁰¹

When Argentina’s Foreign Minister Carlos W. Pastor returned from Washington, he depicted the OAS resolution as “...one of the most resounding successes of Argentine diplomacy...” and was convinced to have “...written a definitive end to the human rights chapter.”⁶⁰² Obviously, this was not the case. However, at the General Assembly in 1981 in Saint Lucia, Argentina’s Permanent Representative Raúl Quijano and IACHR’s chairman Farer again argued about the Commission’s competence.⁶⁰³

tions on the resolution text. Some sources said that Mexico favored the Argentine demands in order to solve the problem with two persons, including former president Héctor Cámpora, who had fled to the Mexican embassy in Buenos Aires. Clarín, Buenos Aires, November 30, 1980, pp. 8/9. Later on, the Buenos Aires newspaper *La Nación* reprinted a photo taken at the Assembly in 1980, which showed De la Colina, congratulating Pastor. See: Pastor, p. 292. De la Colina acted as mediator, although his delegation was instructed to strongly support the Commission. Apparently, the Mexican veteran diplomat reached to modify his delegation’s strong stand and converted it into a conciliatory role. On de la Colina’s chairmanship of the working group, see: Rafael de la Colina – El debate sobre derechos humanos en los órganos políticos de la OEA, in: Human Rights in the Americas, Homage to Carlos Dunshee de Abranches, p. 342.

599 Clarín, Buenos Aires, November 28, 1980, p. 1.

600 Pastor, p. 292.

601 Ibid.

602 Clarín, Buenos Aires, November 29, 1980, pp. 2/3. Cited as in Guest, p. 518, footnote 36.

603 OEA/Ser. P/XI.0.2, 4 diciembre 1984, Volumen II, Parte II, Undécimo Período Ordinario de Sesiones, Castries, Santa Lucia, Del 2 al 11 de diciembre 1981, Primera Comisión, pp. 65-69.

The National Commission on Forced Disappearances acknowledged that the visit of the IACHR provided a valuable source for the reconstruction of many cases and helped to identify the systematic measures of the regime when democratic rule was reinstalled.⁶⁰⁴ This fact is certainly true, but what impact did the visit and the report have on the human rights situation in Argentina during the dictatorship? Many factors must be considered to explain the delay of the on-site observation. In general, the situation in Argentina was not as clear as it was in Chile after the coup in 1973. The domestic situation before the coup in March 1976 in Argentina also led several media and individuals to welcome the *Putsch*. Accordingly, the IACHR might have chosen to wait and see the development of that situation.⁶⁰⁵

In addition, the Argentine junta did not want to commit the same error as the Chilean regime in 1973 and 1974. It tried to avoid a Commission visit and was well aware of the possible effect on national and international public opinion of such an on-site observation.⁶⁰⁶ Also, the systematic employment of forced disappearances clearly shows that the junta sought not to appear as a perpetrator of abuses. In 1978, the Argentine government could host the Soccer World Championship – a public relations victory, which they did not want to be affected by an on-site investigation of the Inter-American Commission on Human Rights with a likely negative result. On the other hand, it is possible that the junta considered its human rights record in 1979 as ‘presentable’ because by then, the massive violations had ceased. Furthermore, internal considerations within the inter-American system must be taken into account: In 1976, the IACHR did not possess the political-diplomatic and financial support of the US administration and Argentina was regarded as an important Member State, which contributed eight percent of the OAS budget.⁶⁰⁷ Also, the Chile case was more prominent because of its symbolism, and because

604 CONADEP, p. 445.

605 In its 1981 report on Nicaragua, the IACHR also showed some understanding for the difficult internal situation after the Sandinistas’ victory.

606 Interview with Admiral Oscar A. Montes, Buenos Aires, May 17, 2000.

607 For instance, in a secret National Security Council memorandum of 1970, Argentina and Brazil were named as particular “key governments” in Latin America. National Security Council, National Security Decision Memorandum, Henry A. Kissinger, Subject: Policy Towards Chile, Top Secret/Sensitive Eyes Only, Washington, D.C., November 9, 1970, p. 1 (NSA files).

the Commission had more information on and experience with the Chilean junta. The 1976 General Assembly in Santiago required a well-prepared IACHR. Between 1974 and 1977, the Commission prepared three Special Reports on the human rights situation in Chile – three reports within the first five years of dictatorship. Moreover, the trouble within the IACHR's Secretariat and the Commission itself (three members announced not to run for another term, see chapter III. 1.) affected the Commission's radius beyond the troubled year of 1976. The resignation of Luis Reque was without a doubt a weakening factor internally in the Secretariat, but also for the authority and steadfastness of the IACHR within the OAS and outside the organization. In 1977, the situation in the Secretariat of the IACHR was still far from that before March 1976. The unsuitable Executive Secretary Emilio Castañón Pasquel (June-December 1976) was finally fired by Orfila on the Commission's request and Vargas Carreño filled the vacancy in the Executive Secretariat. In the meantime, Charles Moyer served as the Secretariat's interim director. The fact that Charles Moyer was, as a US citizen, only nominated as Executive Secretary ad-interim was another issue: Under Moyer's temporary leadership, it may have been the case that the IACHR was not strong enough to confront such a powerful and important country like Argentina. When Vargas Carreño took office, he had to become acquainted with the Secretariat's functioning because he had not been an expert in human rights matters until then. The fact that he had to spend time on learning how the IACHR worked and how to deal with complaints might have resulted in a hesitation in handling such a sensitive case such as Argentina. In the following years, the IACHR enjoyed Carter's support. Carter and Derian also confronted the Argentine junta with various strategies: conditioned military aid, opposition in international finance institutions and in the bilateral US-Argentine relations. These actions could have contributed to a conviction within the IACHR that the US administration itself would address the Argentina case. The fact that the junta's invitation was preceded by a secret agreement between Vice-President Mondale and Videla feeds the assumption that the role of the US was important, if not necessary and decisive. The US-Argentine relations were particular ones and not comparable to the patrimonial role the US played toward smaller countries.

In 1978, the Commission felt the impact of the Carter administration's influence when it was invited by Panama and El Salvador to

visit those countries. The visit and the report on Nicaragua were also taking place at this time. The relatively small-staffed IACHR had a lot of work to accomplish, and as a result, less time could be devoted to the Argentine case. Further, the Commission could argue that it had not received an official invitation by the junta, although the IACHR had prepared various documents on countries without an on-site visit (for instance, the documents on Paraguay and Uruguay; all Cuba reports). On the other hand, a critical report published without an on-site visit probably would have guaranteed a permanent refusal of any government permission for a Commission visit. Accordingly, the IACHR had to consider strategic aspects – whether or not to issue a likely highly critical report on the junta's human rights performance in order to draw attention and lay pressure on the government's measures. In contrast, the option of waiting until an invitation was extended could help – and in fact, it did – the Commission was able to prepare a much more comprehensive report. The simple presence of the Commission during its visit was widely seen as support for the victims and their families and provided them some relief and hope. Further, the decrease of violations after the Commission's visit was often mentioned as a positive outcome. In summary, there are many reasons that favor the Commission's decision to issue a report based on an on-site visit and to wait until it received an official invitation. But the question still remains: Could an IACHR report before 1979 without a visit have helped the victims and might have contributed to a decline of the violence?

Naturally, there were institutional factors which presented obstacles for an earlier visit or report: in 1979, the Commission was busy with the juridical implications for its Regulations and Statute due to the entry-into-force of the Convention. Carter's effort to push many heads of state during the signing of the Panama Canal treaties to ratify the Convention, unforeseeably and unintendedly might have cost Argentine lives. Nevertheless, it was Carter's endeavor that finally enabled the IACHR to realize its significant and transcendental visit to Argentina. In a way, the Commission's delay of the visit was explained by the institutional modifications of the Commission's Statute and Regulations and thus the necessity of the election of new members. However, the Commission had shown more flexibility and faster actions in such urgent situations before. The explanation brought up by the IACHR lacks of former priorities of the Commission, which

had applied less bureaucratic measures to save lives by drawing attention to deplorable human rights situations. It is difficult to criticize the high-profile preparations because on the one hand this naturally caused a delay, but on the other hand it helped to carry out a very efficient scrutiny *in loco*.⁶⁰⁸

Ultimately, the IACHR waited with the preparation of a Special Report until it was granted the permission for an on-site visit. The fact that the diplomatic efforts took until 1978 to reach an agreement on such a visit must be regarded as a shortcoming of the Commission's strategy because the worst years of the so-called 'dirty war' were over in 1979. Further, the IACHR could be accused of having permitted, or at least indirectly favoring, a so-called 'whitewashing' of the junta because it considered the adjustments due to the entry into force of the Convention more urgent than the visit. This was an argument that obviously contradicts with previous practical and unbureaucratic actions carried out by the Commission or its Secretariat. Apparently, the IACHR was aware of the significance of the Argentine case and spent much time preparing the visit, a fact which also enabled the junta to 'clean up' prior to the IACHR arrival. This postponement caused a delayed transmittal of the Report to the General Assembly. In 1980, the General Assembly was too weak to approve a condemning report. The Commission lost precious time but finally issued an outstanding document on State terrorism and helped victims with its presence in Argentina and the report as well. Nevertheless, the entire handling of the Argentine case by the Commission was not a remarkable success: The mystified visit and the elaboration of the report were accompanied by several shortcomings – such as the supposed 'whitewashing' and in general the delay of the visit – that partly diminish the value of the IACHR's performance.

In conclusion, the transcendence and the impact, willingly attributed to the Commission's visit and its report, are exaggerated. In reality, a report on Argentina's human rights situation was overdue in

608 See Wolfgang S. Heinz – Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Argentina 1976-1983, in: Heinz/Frühling, p. 657. See Vargas Carreño, pp. 301, 302. However, a human rights activist underlines the 'cleaning up' that was provoked by the Commission's visit. It is true that the IACHR's investigation involuntarily speeded up this *blanqueo* (whitewashing) and indirectly led to additional disappearances or deaths, respectively. Interviews.

1979 and the handling of the Commission's report at the 1980 General Assembly showed that there was no substantial impact in the OAS at the diplomatic level due to the changed political circumstances. The on-site investigation took place too late, it was postponed with a potentially dramatic effect on numerous detainees in clandestine detention camps, and the report – though remarkable – could no longer find enough supporters at the OAS General Assembly in 1980. Certainly, the violations decreased but this tendency had already begun before the Commission's visit.

IV. Political Conflicts and Civil Wars in Central America

A review of the 1980s reveals two predominate foreign policy currents: one, the revival of the East-West conflict accompanied by an outspoken aggressive-conservative approach of the Reagan administration reflecting the general conservative climate,¹ and two, the partly embattled and highly politicized civil wars in Central America. Other influential events in the hemisphere included the redemocratization of several South American countries and the Latin American debt crisis that weakened the region's role as a relatively influential Third World actor.² A combination of the Cold War unilateralism of the Reagan administration and the undermined Latin American position ushered in a financial crisis and an alarming absence of OAS activities in the region.³ On the broader international scale, by the mid-1980 the decadence of the Soviet empire already began. In 1991, not only as a result of the end of the East-West confrontation but more as the consequence of regional developments, the OAS agreed on resolution 1080, which considerably diminished the importance of the nonintervention principle.

This chapter begins first with the new human rights concept and policy of the Reagan administration and its consequences for the US position toward the Organization of American States and the Inter-American Commission on Human Rights. This section provides the reader with an overview of the shifting mood and method of US for-

1 See Atilio A. Boron – *Becoming Democrats? Some Skeptical Considerations on the Right in Latin America*, New York/Westport/London 1992, pp. 68, 72, 73.

2 Accordingly, for instance, Drekonja-Kornat remarks that Mexico had to abandon its “foreign affairs machismo” due to the debt problem. Drekonja-Kornat, p. 53.

3 An internal OAS paper of 1984 stresses that the organization enjoyed attention during the 1970s: the Panama Canal Treaties (1977), the speech of Pope John Paul II. at the OAS (1979) and the human rights issue (1975-1980) provided the OAS with public attention and interest. During the 1980s, there was no comparable issue that raised high attention. See Memorandum, From: Francis X. Gannon, OAS Consultant on Public Affairs, to: Their Excellencies, OAS Permanent Representatives and Permanent Observers, Subject: Report on Effect of OAS Activities on the U.S. Press and Public, May 23, 1984, p. I. See: José Luis Ramírez León – *La OEA, los países latinoamericanos y la democracia en el hemisferio*, in: *Síntesis*, Madrid, No. 21, Julio-Diciembre 1993, pp. 197/198.

eign policy toward Latin America and the OAS. Specifically, this chapter will examine the human rights situation during the civil wars in Nicaragua and Guatemala, the US intervention in Panama, Reagan's stance on these issues, and the position and acting of the IACHR. The relationships between the affected Member States and the Commission also demonstrate the scope for action of the IACHR in that decade. However, it is not the intent of this section to broadly explore the human rights policy of US president George Bush – although there obviously is a lack of academic research on his human rights stance – due to the fact that it was not as influential for Latin America as the Reagan administration.⁴ Finally, this chapter will also discuss the IACHR's performance with regard to the human rights violations during the Salvadoran armed conflict, considered to be truly a unique case in regard to the special handling by the Commission.

IV.1. Redefining Human Rights: The Reagan Administration

“... we are now free of that inordinate fear of communism which once led us to embrace any dictator who joined us in that fear.”⁵

Jimmy Carter 1977

Reagan's foreign policy was shaped more by historical and structural interests than by circumstances or individual policy makers.⁶ In general terms it is fair to state that under the Reagan administration (1981-1989), US foreign policy returned to its traditional unilateralism.⁷ The administration of US president Reagan focused on the East-West confrontation and also related events in other regions to the

4 Besides US reactions toward the massacre of Tiananmen in China (1989) and the Jesuit murder case in El Salvador (1989), Bush's human rights policy has not been subject to prolific investigation as Carter or Reagan's. See: Cohn – Human Rights, p. 445.

5 Jimmy Carter – Speech on Humane Purposes in Foreign Policy (1977), in: Laquer/Rubin (Eds.), p. 350. Carter stated in an interview that Reagan had abandoned the US commitment to human rights. Don Richardson (Ed.) – Conversations with Carter, Boulder/London 1998, p. 261.

6 Morris H. Morley (Ed.) – Crisis and Confrontation. Ronald Reagan's Foreign Policy, Totowa, New Jersey 1988, p. 2.

7 Larman C. Wilson/David W. Dent – The United States and the OAS, in: David W. Dent (Ed.) – U.S.-Latin American Policymaking. A Reference Handbook, Westport/London 1995, p. 28.

somewhat constructed perception of an exclusively bipolar system.⁸ While Carter had confronted revolutionary 'Third World' movements with containment and isolation policies, Reagan opted for roll-back and 'liberation' strategies. As a result, the military cooperation between the armed forces of Latin American nations and the armed forces of the US witnessed a renaissance.

Furthermore, the Reagan presidency must be divided into two phases: first, the initial period until 1985, and second, his last four-year term in office. While Reagan's foreign policy during his first years at the White House was more belligerent, the second phase witnessed some smoothing of Reagan's original hard-liner politics.

In 1985, the conservative publicist Charles Krauthammer reportedly coined the term "Reagan Doctrine."⁹ This doctrine, which was mainly traced to the Central American situation, described US endeavors to promote anti-Communist revolutions. Reagan changed US policy from preventing Communism to 'curing' it.¹⁰ Pastor, Director of Latin American Affairs on the National Security Council under the Carter administration, mentions that ironically, the Reagan doctrine "...was a replica of the Communists' support of national liberation movements."¹¹

Reagan's foreign policy was principally directed against the USSR and intended to demonstrate the superiority of Western values of individual dignity and freedom. Furthermore, the United States wanted to rebuild its credibility in the Third World in order to contain and push back Soviet influence, even if it required military force.¹² The era of

8 Accordingly, Morley finds that generally, the "...doctrine of the bipolar world has been resuscitated by the United States in the 1980s". Morley, pp. 1, 2.

9 There was a somewhat interesting discussion organized by the conservative think tank American Enterprise Institute, which provides a sense for the stand of the discussion on the so-called Reagan Doctrine. See: Christopher C. DeMuth/Owen Harries/Irving Kristol/Joshua Muravshik/Stephen Rosenfeld/Stephen Solarz (participants) – *The Reagan Doctrine and Beyond*, American Enterprise Institute, Washington, D.C./London 1987.

10 James M. Scott – *Deciding to Intervene. The Reagan Doctrine and American Foreign Policy*, Durham/London 1996, pp. 1, 2.

11 Robert A. Pastor – *Whirlpool. U.S. Foreign Policy Toward Latin America and the Caribbean*, Princeton, New Jersey 1992, p. 82.

12 National Security Decision, Directive Number 75, January 17, 1983: U.S. Relations with the USSR, Secret/Sensitive, in: Christopher Simpson – *National Security Directives of the Reagan and Bush Administrations. The Declassified History*

Ronald Reagan was accompanied by a strict economic policy consisting of free trade, monetarism, or, as its fiercest opponents termed it, neoliberalism. The official outbreak of the Latin American debt crisis in 1982 brought a lack of alternatives for the countries of Latin America to the international finance regime of the World Bank and especially of the International Monetary Fund (IMF). This decisively reduced Latin America's sphere of influence and action and amplified the political influence of the US in the hemisphere due to its clout in the international finance institutions and their decisions regarding countries' creditworthiness.

In addition, it is important to emphasize that Reagan viewed the failure of the Vietnam War principally as a public relations debacle, not as a defeat of political strategy.¹³ As a result, the new administration focused prominently on PR endeavors to promote its Central America policy.

Furthermore, opposition to US-supported governments repeatedly and categorically was labeled as Communist in spite of overwhelming evidence that the resistance was mainly community based and mostly moderate, influenced by religious and liberal political beliefs.¹⁴ However, when the Sandinistas came to power in Nicaragua, the USSR forcefully supported the Nicaraguan government as well as the Salvadoran guerrilla forces, at least indirectly.

Nevertheless, many authors suggest that the beginning of Reagan's second term in 1985 represented a 'reversal' of the so-called Reagan Doctrine, which was also interpreted as the beginning of the end of the Cold War.¹⁵ In fact, since 1984/85, US-Soviet relations abandoned the heated revival of ideological confrontation that had escorted Reagan's first years in office. The new reformist approach symbolized in terms like *Glasnost* or *Perestroika* and even more per-

of U.S. Political and Military Policy, 1981-1991, Boulder, Colorado 1995, pp. 257, 258.

13 Jeremy M. Brown – Explaining the Reagan Years in Central America. A World System Perspective, Lanham/London 1995, p. 223. In addition, Payaslian finds that an investigation of the media's impact on foreign aid decisions is necessary. Simon Payaslian – U.S. Foreign Economic and Military Aid. The Reagan and Bush Administrations, Lanham/London 1996, p. 117.

14 Brown, p. 250.

15 See Beth Fischer – The Reagan Reversal. Foreign Policy and the End of the Cold War, Columbia/Missouri 1997, p. 145.

sonified in the Secretary General of the Soviet Central Committee, Mikhail Gorbachev, led to a much friendlier bilateral atmosphere that also affected the US policies on Central America. Accordingly, by 1987 the US policy that developed from the collision between Congress members and the government echoed more congressional than presidential views.¹⁶

Meanwhile, the Iran-Contra scandal¹⁷ that became public in the mid-1980s further diminished the administration's impact on events in Central America. US Congress favored a negotiated solution in Nicaragua while some hard-liners in Reagan's cabinet continued to urge support for the right-wing Contras and a continuation of the fight against Communism without negotiating. In addition, the highly unpopular public opinion concerning US involvement in both El Salvador and Nicaragua contributed to the administration's increasing loss of influence in the region.¹⁸ This also affected the OAS.¹⁹ Nevertheless, president Reagan received sufficient Congressional support to continue the battle in El Salvador for eight years, though he did not get similar support for his plans in Nicaragua.²⁰

With regard to Reagan's human rights policy, particularly in Central America, the research can roughly be divided into two main categories. First, liberals and left-wing authors see a double standard: the US only accused leftist regimes and supported (or was more sympathetic with) right-wing allies. The second category is composed of right-wing or Cold War writers²¹ who defend Reagan's accusations against Sandinistas and Soviets as well as his government's affirmative support for traditional allies in question in order to maintain na-

16 James M. Scott – *Deciding to Intervene. The Reagan Doctrine and American Foreign Policy*, Durham/London 1996, p. 152.

17 After Congress's refusal to approve Reagan's request for financial support to the Nicaraguan armed resistance, the Contras, the CIA sold weapons to Iran and supported the Contras with the bargained money. National Security staff member Oliver North played a prominent role in this affair.

18 Frances Fitzgerald – *Way Out There in the Blue. Reagan, Star Wars and the End of the Cold War*, New York 2000, pp. 434, 230.

19 See Stoetzer, p. 200.

20 Lars Schoultz – *Beneath the United States. A History of U.S. Policy Toward Latin America*, Cambridge/Massachusetts, London 1998, p. 365.

21 Fowler would speak of "bipolar thinkers" with regard to Reagan's people. See Michael Ross Fowler, p. 47.

tional security goals and contain or even roll back Communism.²² Cohn provides a recommendable overview of the academic research on Reagan's human rights performance and concludes that numerous scholars familiar with the topic could not settle on a consensus. However, Cohn herself most agreeably determines that Reagan employed the human rights matter as an instrument in a larger war, "not as an end in itself."²³ This 'human rights policy' genuinely served as the sympathetic US foreign policy that seemed to be necessary for the co-existence of domestic circumstantial relativism in other countries.

It is clear that the US employed different standards in its human rights policy. This had already been the case with the Carter administration. But under Reagan's presidency, the application of this double standard became even more marked and based on political aims often bereft of any human rights concerns.

Nevertheless, the strong conceptualization of human rights performances and related US policies, respectively, also underwent a change during the Reagan years. During his second four-year term, the Reagan administration eventually took a stand on human rights that was not that different from the Carter government in 1979/1980. During Reagan's last years in office, human rights became less politicized. This was not necessarily the result of a new approach from the executive, it was due more to the lack of sympathy in Congress for the administration's Central America policy in general and the Iran-Contra scandal in particular. Furthermore, the 'lame duck' phenomenon during the president's last year in office probably affected Reagan's impact in the region as a whole.

As seen before, the Carter administration had modified its human rights policy toward a more 'practical' approach by 1980/1981. So, Reagan's new stance on basic human rights was not simply a blunt reversal of Carter's policy, though Coatsworth correctly argues that the new administration at first ignored the human rights issue.²⁴ While president Jimmy Carter, his Secretary of State, Cyrus Vance, and Carter's human rights attorney, Patricia Derian, had presented a three-category human rights definition, the Reagan administration based its

22 In general, see, for instance, Brown, Morley, LaFeber, Coatsworth, Arnson, Falcoff, Kramer, Carothers, Wiarda, and Schoultz.

23 Cohn – Human Rights, pp. 441, 443.

24 John H. Coatsworth – Central America and the United States, The Clients and the Colossus, New York/Toronto 1994, p. 170.

human rights policy on a different approach. The Reagan government began to highlight the close relationship between human rights and democracy.²⁵ Referring almost orthodoxically to an academic article by political scientist and Reagan's later UN Ambassador Jeane Kirkpatrick, the Republican government initially insisted on a distinction between authoritarian and totalitarian regimes.²⁶ Schoultz remarks that Kirkpatrick, who was described as "Chief sadist-in-residence of the Reagan Administration" by leftist critic Chomsky²⁷, apparently took her theory from Howard J. Wiarda with whom she had worked at the conservative American Enterprise Institute.²⁸ Donnelly further points out that her approach traces back to Arendt and Friedrich/Brzezinski (1950s).²⁹

According to Kirkpatrick's theory, traditional right-wing dictators were usually perceived as authoritarian rulers who – though violating human rights – left some space in society for certain liberties.³⁰ Furthermore, those authoritarian regimes were traditional US allies and therefore allowed for a possible improvement to the human rights situation through quiet diplomacy. In contrast to authoritarian regimes, all Communist governments were considered to be totalitarian regimes, equating those with the institutionalization of human rights

25 Howard J. Wiarda – *Democracy and Its Discontents. Development, Interdependence, and U.S. Policy in Latin America*, Lanham/New York/London 1995, pp. 73/74.

26 Jeane J. Kirkpatrick – *Dictatorships and Double Standards*, in: Howard J. Wiarda (Ed.) – *Human Rights and U.S. Human Rights Policy, Theoretical Approaches and Some Perspectives on Latin America*, Washington, D.C. 1982, pp. 5-59 (First published in: *Commentary*, November 1979).

27 Noam Chomsky – *Turning the Tide. U.S. Intervention in Central America and the Struggle for Peace*, Boston 1985, p. 8.

28 Schoultz – *Beneath the United States*, p. 378.

29 Jack Donnelly – *Universal Human Rights in Theory and Practice*, Ithaca, NY 1989, p. 237.

30 Boron quotes Kirkpatrick with regard to the Carter administration's opposition to the military coup that prevented the inauguration of elected Bolivian president Hernán Siles Zuazo in 1980 as follows: "Even five years ago, the U.S. would have welcomed a coup that blocked a government with a significant Communist/Castroite component. Ten years ago the U.S. would have sponsored it, fifteen years ago we would have conducted it. This time, however, the U.S. ambassador to Bolivia and the State Department lobbied hard in Washington and with the press against the new military rulers." See Atilio A. Boron – *Becoming Democrats? Some Skeptical Considerations on the Right in Latin America*, New York/Westport/London 1992, p. 79.

violations. Unlike Communist governments, Kirkpatrick's concept regarded traditional authoritarian regimes to be able to gradually convert to democracy. While authoritarian regimes could improve their human rights records, totalitarian (Communist) rule did not offer this possibility because Communism was seen as the ultimate human rights violation. The neoconservative approach could be summed up as avowing that the short- and long-term interests are best served when the US protects their allied right-wing regimes.³¹ Falcoff defends Kirkpatrick's article against widespread criticism and holds that she did not generalize or present a strategy or even expressed sympathy with traditional authoritarian regimes. According to him, her only aim was to criticize Carter's naive approach.³² The author suggests that the historical developments in the last decade of the 20th century, particularly in Eastern Europe, have contradicted the justification for Reagan's human rights distinction, which argued that unlike authoritarian regimes, no totalitarian (Communist) regime had converted into a democracy.³³

Apart from the 'loss' of pro-Western regimes in Iran and Nicaragua, Kirkpatrick further criticized Cyrus Vance's categorization since it included the – mainly rhetorical – acceptance of economic and social 'rights'.³⁴ In general, the Reagan administration rejected including economic, social and cultural rights in its human rights concept. Reagan's philosophy that the private sector's entrepreneurial character

31 Sara Steinmetz – *Democratic Transition and Human Rights. Perspectives on U.S. Foreign Policy*, Albany/NY 1994, p. 5. Ironically, the author of this investigation considers Carter's reversal with regard to El Salvador in January 1981 as the first open application of Kirkpatrick's concept.

32 Finally, Falcoff describes Reagan's Latin America policy as "intelligent anti-Communism". Mark Falcoff – *Latin America: Was There a "Kirkpatrick Doctrine"?* in: Eric J. Schmertz/Natalie Datlof/Alexej Ugrinsky (Eds.) – *President Reagan and the World*, Westport, Connecticut/London 1997, p. 400.

33 See Michael Novak – *Human Rights and White Sepulchers*, in: Howard J. Wiarda (Ed.) – *Human Rights and U.S. Human Rights Policy. Theoretical Approaches and Some Perspectives on Latin America*, American Enterprise Institute for Public Policy Research, Washington, D.C. 1982, p. 82.

34 Jeane Kirkpatrick – *Establishing a Viable Human Rights Policy* (1981), in: Laquer/Rubin (Eds.), pp. 360, 358.

should stimulate economic growth and prosperity did not match with the concept of socioeconomic 'rights'.³⁵

While the Carter government had counted – at least rhetorically – socioeconomic rights as human rights, the new conservatives in Washington limited the basic rights definition to civil and political rights. In contrast, for many Latin Americans human rights also included economic and social aspects like the right to adequate nutrition.³⁶ Though the US-sponsored counterinsurgency or war of low intensity concept contained political reforms and economic support, the idea to expand its human rights conception to socioeconomic commitments would almost have been felt among the administration's officials as a step toward Socialism.

Although there are different interpretations, women's rights did not constitute an important aspect of Reagan's human rights concept.³⁷ The research regarding Reagan's first years in office, however, is divided: some authors state that Reagan was actually supportive of women's rights, but the main view considers Reagan with a "...simplistic and unrealistic view of women's role in society."³⁸

The Kirkpatrick doctrine underwent a revision in the mid-1980s related to the modification of Reagan's hawkish approach in East-West relations.³⁹ Meier observes a sort of refinement of the two-forms-of-regimes theory propagated by Kirkpatrick: now, the mid-1980s Salvadoran experience resulted in a three-categories scenario: 1) if Communists are in power, they have to be ousted with violence (as happened in Grenada), 2) if authoritarians are in charge who face a democratic opposition, the US supports the latter (somewhat as in El Salvador in 1979) and 3) if authoritarians are in power who merely

35 A. Glenn Mower, Jr. – Human Rights and American Foreign Policy, The Carter and Reagan Experience. In: Studies in Human Rights Number 7, Westport 1987, p. 39.

36 J.D.B. Miller – Ideology and Foreign Policy: Some Problems of the Reagan Administration, Canberra Studies in World Affairs No. 8, Department of International Relations, The Australian National University, Canberra 1982, p. 18.

37 Jeane Kirkpatrick was the only woman with cabinet rank during his first term. Interestingly, Kirkpatrick herself wrote a book on "political women". See: Jeane J. Kirkpatrick – Political Woman, New York 1974.

38 Janet K. Boles – Women's Rights and the Gender Gap, in: Tinsley E. Yarbrough (Ed.) – The Reagan Administration and Human Rights, New York 1985, pp. 57, 58, 72.

39 See Washington Post, October 27, 1985, p. A9.

face a Communist alternative, the United States backs the regime in charge. Accordingly, the second aspect broadened the black-and-white scheme of Kirkpatrick's model. A new approach was employed in the Salvadoran case, since the Christian Democratic president Duarte fought against extremists from the left and the right. But Secretary of State George Shultz was the only government member who favored the new approach. Kirkpatrick used an interesting comparison to demonstrate her point of view: if someone directs a knife to another person, there are two possibilities: in one case it is a murderer who wants to stab the other to death. In the other case, it is a scalpel of a surgeon who saves his patient's life.⁴⁰ The author leaves this elusive metaphor without comment.

In practice, the Reagan administration tried to pursue its human rights foreign policy goals with quiet diplomacy⁴¹ and ideologically shaped double standards. During the Carter presidency, Patt Derian had personified the omnipresent voice of perceptible human rights activism. Under Reagan, the strategy to discuss human rights shifted back to the bilateral quiet discussion preferred by Kissinger. A first memorandum showed the administration's position when it proposed to return to traditional quiet diplomacy.⁴²

Besides Kirkpatrick's inflationary cited work on US human rights *Realpolitik*, an initial remark made by Reagan's first Secretary of

40 Thomas Meier – Die Reagan-Doktrin. Die Feindbilder. Die Freundbilder: Afghanistan, Angola, Kambodscha, Nicaragua; Bern 1998 (also: Diss. in Zurich 1996/97), pp. 33, 35, 36, 38, 64.

41 For instance, see Richard Schifter – The United States Government's Commitment to Human Rights, in: Howard J. Wiarda (Ed.) – Human Rights and U.S. Human Rights Policy. Theoretical Approaches and Some Perspectives on Latin America, American Enterprise Institute for Public Policy Research, Washington, D.C. 1982, p. 55.

42 In a memorandum issued before Reagan's inauguration, the incoming administration indirectly called for quiet diplomacy by advocating a "less publicly confrontational" approach. The paper further advised to "[s]trengthen human rights for the long haul through which are more in keeping with the traditional foreign diplomacy: the unpublicized meeting, one to one, decisions on human rights questions and credit change being those of the Latin American governments themselves. Consider policy approaches which emphasize not sanctions against violations but positive support." Memorandum, Subject: Interim Report on the Bureau on Inter-American Affairs and Related Bureaus and Policy Areas, Department of State, Washington, D.C., Office of the President-elect, January 12, 1981, pp. 7, 10 (NSA files).

State, Alexander Haig, also enjoyed popularity among those who described the changed mood concerning fundamental rights in US foreign affairs. In a press conference in January 1981, Haig stated that the new administration's policy would replace human rights with the fight against international terrorism because the latter constituted the ultimate form of human rights violations.⁴³ Haig reiterated his stance at the Eleventh General Assembly of the OAS, where he presented three main goals of US foreign policy: 1) the promotion of democracy, 2) the creation of a new economic opportunity, and 3) opposition against interventionism by strengthening the principles of nonintervention and collective security. Reagan's first Secretary of State added that the concept of democracy would include human rights and further stressed: "The United States opposes human rights abuses regardless of the source."⁴⁴ During his first appearance at the OAS General Assembly, Haig further proposed to apply the collective security treaty of Rio while speaking of Nicaragua and Cuba. However, he did not specify this point in regard to concrete measures.⁴⁵

Elliott Abrams succeeded Patricia Derian as Assistant Secretary of State for Human Rights and Humanitarian Affairs. Abrams, a Democrat who supported Reagan in 1980, preferred 'quiet diplomacy' and pragmatism. Before Abrams was accepted, the Reagan administration suffered its first political defeat when Congress rejected Reagan's first

43 Secretary Alexander Haig, News Conference, January 28, 1981, U.S. Department of State, Bureau of Public Affairs, Current Policy No. 258, p. 5. In accordance, the incoming administration held that terrorism should be considered as inhumane as repression. Memorandum, from: Pedro A. San Juan, State Department Transition Team, to: Ambassador Robert Neumann, Subject: Interim Report on the Bureau on Inter-American Affairs and Related Bureaus and Policy Areas, Department of State, Washington, D.C., Office of the President-elect, January 12, 1981, p. 7 (NSA files).

44 OEA/Ser.P/XI.0.2, 4 diciembre 1984, Vol. II, Parte I; Undécimo Período Ordinario de Sesiones, Castries, Santa Lucía, del 2 al 11 de diciembre de 1981, Actas y Documentos, Vol. II, Primera Parte, Actas textuales de las sesiones plenarias y de la Comisión General, pp. 84-88.

45 Washington Post, December 5, 1981, p. A20. After the killings of four US churchwomen in El Salvador by members of the National Guard, Haig further mentioned that the women might have been involved in a shooting, which additionally contributed to doubts on his undivided dedication to human rights. Cynthia J. Arnson – Crossroads: Congress, the President, and Central America, 1976-1993, Pennsylvania 1993, 2nd edition, p. 63; Enrique A. Baloyra – El Salvador in Transition, Chapel Hill/London 1982, p. 126.

candidate, Ernest Lefever, for the post. Lefever was accurately considered to be too little concerned with human rights and subsequently Congress denied approval of his nomination.⁴⁶ Moreover, almost a year passed until Abrams filled the vacancy – a clear indicator of the Reagan administration's position on human rights.⁴⁷

Initially, the US Congress rejected the new administration's differentiation between authoritarian and totalitarian or, in other words, between friendly right wing and adversary Communist regimes.⁴⁸ Besides liberal opponents among Congress members who spoke on behalf of human rights, there were singular critics from the extreme right-wing area as well, though to a lesser extent. US Congress reacted to a critical domestic and international public in regards to human rights. In the Salvadoran case, as a result of Congressional pressure, the president had to present the famous 'certifications' before Congress, with which his administration absolved the Salvadoran governments in order to justify and authorize military and economic aid to that Central American country. These presidential statements served to publicly 'certify' that there existed an 'improving' human rights situation in El Salvador. Cynthia Arnson provides a detailed exploration of such certification procedures.⁴⁹

Ironically, Reagan's new human rights policy animated additional efforts from human rights NGOs, thereby contradicting the supposed decline of the issue's relevance after Carter's departure from the White House. Instead, the number of Latin American human rights groups more than doubled between 1980 and 1990.⁵⁰ For instance,

46 Arnson, p. 61. Howard J. Wiarda – *The Democratic Revolution in Latin America. History, Politics, and U.S. Policy*, New York 1990, pp. 131-133.

47 A. Glenn Mower, Jr. – *Human Rights and American Foreign Policy, The Carter and Reagan Experience*. In: *Studies in Human Rights* Number 7, Westport 1987, p. 34.

48 See Cynthia J. Arnson – *Crossroads: Congress, the President, and Central America, 1976-1993*, Pennsylvania 1993, 2nd edition, pp. 61.

49 *Ibid.*, particularly pp. 84-91, 100/103, 119, 138/139, 151. See David Forsythe – *Human Rights and U.S. Foreign Policy. Congress Reconsidered*, Gainesville (Fla.) 1988, pp. 81-90.

50 Kathryn Sikkink – *The Emergence, Evolution, and Effectiveness of the Latin American Human Rights Network*, in: Elizabeth Jelin/Eric Hershberg (Eds.) – *Constructing Democracy, Human Rights, Citizenship, and Society in Latin America*, Boulder/Oxford 1996, pp. 65, 66.

Americas Watch was created as one of the reactions to Reagan taking office.

In general, Latin America enjoyed less overall attention during the Reagan administration. Mainly the Central American crisis and the debt problem shaped US-Latin American relations. After Reagan's electoral victory, US policies toward Argentina and Chile shifted. Reagan was more sympathetic toward the Pinochet government in Chile and the junta in Buenos Aires. The State Department reports on human rights records in different countries consistently described the situation in Argentina and Chile as "improved", though persisting violations were mentioned as well.⁵¹ As early as in 1981, Ambassador Kirkpatrick was sent to Buenos Aires and Santiago de Chile. During her stay in Argentina, Reagan's UN Ambassador refused to meet with human rights groups.⁵²

When Reagan came into office, he considered reestablishing military aid to Chile. Further, Reagan ceased to oppose loans to Argentina, Chile, Paraguay or Uruguay in international financial forums.⁵³ Congress, however, installed a certification program and conditioned aid for Chile so as not to support international terrorism and the Chilean cooperation in the case of the assassination of Orlando Letelier.⁵⁴ Nevertheless, when the new government approached the military governments in Argentina and Chile, the main reason for the new relationships was not exclusively its sympathy with anti-Communist ideology in Buenos Aires or Santiago, but the geostrategic and economic importance of Argentina and Chile in the region as well.⁵⁵

On the other hand, US relations with Latin America in general and Argentina in particular dramatically worsened in 1982 when Reagan

51 Daniel C. Kramer – International Human Rights, in: Tinsley E. Yarbrough (Ed.) – *The Reagan Administration and Human Rights*, New York 1985, pp. 232-234. Robert A. Pastor – *The Reagan Administration and Latin America: Eagle Insurgent*, in: Kenneth A. Oye/Robert J. Lieber/Donald Rothchild (Eds.) – *Eagle Resurgent? The Reagan Era in American Foreign Policy*, Boston/Toronto 1987, p. 368.

52 Muravshik, a protagonist of the neoconservatives, held that Reagan maintained some of Carter's measures against Argentina but discarded others. Joshua Muravshik – *The uncertain crusade. Jimmy Carter and the Dilemmas of Human Rights Policy*, Lanham/New York/London 1986, p. 198.

53 Robert A. Pastor – *Whirlpool*, p. 70.

54 Frühling, p. 496.

55 See Kramer, pp. 232-234.

did not support the Argentine armed forces during the war on the Falkland Islands/Malvinas. The British-Argentine conflict illustratively showed the authentic commitment of the Reagan administration: at that time, the US would always stick to its historical transatlantic partners and NATO members. To Mexican OAS ambassador Heller, the Falklands/Malvinas war appeared to be the ‘coup de grâce’ for the organization.⁵⁶ It remains interesting to review the Argentine junta’s misperception or even naiveté to have expected the United States to be supportive. The obligations contained in the 1947 Rio Treaty on reciprocal military assistance did not help the government in Buenos Aires either, because by and large the United States had always substantially carried out a unilateral policy toward Latin America though sometimes almost masterly disguised as multilateral operation. The disaster of the foolish Falkland war did not only affect the incapable armed forces in Argentina, which consequently lost power in 1983⁵⁷, but also negatively impacted inter-American relations. The OAS lost its credibility and Reagan’s alliance with British Premier Margaret Thatcher paved the way for exclusively Latin American endeavors outside the OAS to compensate the de facto paralysis of the Organization. In general, US policy toward its southern neighbors sped up Latin American unity and the engagement of middle powers in the region to engage diplomatically outside the OAS.⁵⁸ These purely Latin American diplomatic efforts materialized in the Contadora Group and the Esquipulas peace process. In 1983, an exclusively

56 Claude Heller – México en la OEA: tesis y posiciones tradicionales, in: *Revista Mexicana de Política Exterior*, 54, Mexico City, Junio 1998: La OEA hacia el siglo XXI, p. 11.

57 Interestingly, the IACHR found that after the lost Malvinas/Falkland war the government led by General Bignone complied with the Commission’s recommendations. *Esquema de la práctica seguida por la CIDH en la tramitación de denuncias*, May 1984?, p. 12 (IACHR files, without date).

58 “In effect, the Reagan administration’s policy toward the region became a catalyst for the articulation of a revitalized Latin American nationalism expressed through the principles of self-determination and nonintervention, the essential principle embodied in the Esquipulas II Accord. It accelerated the political cohesion and international diplomatic activity of Latin middle powers outside the context of the Organization of American States (OAS).” Liisa North/Tim Draimin – *The Central American Peace Process: An Overview*, in: Claude Basset (Ed.) – *La politique étrangère américaine de 1980 à 1988: L’héritage Reaganien*, XXe Congrès des Relations Internationales du Québec des 6 et 7 octobre 1988, Québec 1988, pp. 43/44.

Latin American effort was undertaken to resolve the Central American crisis. The so-called Contadora group was followed by the Esquipulas peace process, which also counted only with Latin American supporters. The OAS demonstrated its lack of influence when it was reduced to merely express “the firmest support” for the Contadora process.⁵⁹ The Contadora process was merely a well-intentioned attempt to compensate the OAS incapacity to deal with the Central American conflicts but was in the end fruitless. However, the Esquipulas negotiations were a diplomatic success for Latin America against the unilateral US stance on Central America that had affected the OAS performance. Jonas, for instance, perceived the signing of the Esquipulas Accord in 1987 as a Central American diplomatic achievement, a “striking defeat for the Reagan administration, whose major diplomatic campaign for seven years had been to isolate the Sandinistas from the rest of Central America, while trying to overthrow their government militarily.”⁶⁰

The Esquipulas peace talks since 1987 (Esquipulas II) helped to reach decisive achievements and contributed to pave the way for the arbitration of the Salvadoran and Nicaraguan armed conflicts.

The US military intervention in Grenada in 1983 reaffirmed the source of Latin American resentment against its northern neighbor. Since 1979, the Socialist Maurice Bishop had governed Grenada until the orthodox-Leninist section of the government carried out a violent coup. After the killing of Prime Minister Maurice Bishop, six Caribbean countries asked the US for help. Reagan sent troops to invade the island in an operation that was declared a US-Caribbean joint effort. The United States justified the military intervention in Grenada before the OAS with a reference to the “...anarchic conditions, serious human rights violations and the bloodshed” in that country.⁶¹ Obviously, to blame the Grenadian government for human rights violations served to gain more domestic and international support for the intervention. As in the Dominican Republic in 1965, in Nicaragua during the 1980s and in Panama in 1989, the US publicly pretended to intervene on behalf of fundamental rights. In the case of Grenada, the US government

59 Washington Post, November 18, 1983, p. A27.

60 Jonas, p. 97.

61 OEA/Ser.P/XIII.0.2, 14 noviembre 1983, Volumen II, Parte I, Actas y Documentos, Volumen II, Primera Parte: Actas Textuales, p. 57.

even set up a committee to exploit human rights violations and the Cuban role for public relations.⁶² Consequently, the US administration had learned the effectiveness of converting human rights into a top issue for public relations endeavors.

Fifteen out of the twenty-eight OAS Member States present condemned the US invasion, though the OAS did not consider any resolution on the subject.⁶³ Many Member States opposed the US intervention while six eastern Caribbean nations that supported the invasion with their own troops defended the operation.⁶⁴ The protesting Latin American States were only able to include an indirect condemnation of any direct or indirect interference in domestic affairs of other States into a resolution concerning the Contadora peace process.⁶⁵ The *Washington Post* harshly commented on the absence of any OAS resolution on the military actions as the organization's "...apparently chronic inability to act in times of crisis..."⁶⁶

Nevertheless, the main region to implement the US administration's new human rights approach was Central America. Reagan considered the Panama Canal treaties as historically inappropriate. The new US government tended to see problems in the 'Third World' in general and in Central America in particular through the at times paranoid perception of an enduring Soviet expansionism.⁶⁷ This led to a marginalization of endogenous and structural factors mostly responsible for the persistence of deplorable human rights records.⁶⁸ Accord-

62 National Security Decision, Directive Number 112: Processing and Disposition of Documents Acquired by US Forces in Grenada, Top Secret, Washington, D.C., November 15, 1983, in: Simpson, p. 350.

63 *Washington Post*, October 27, 1983, p. A9; *Washington Post*, November 16, 1983, p. A20.

64 *Ibid.*

65 AG/RES. 675 (XIII-0/83): Peace Efforts in Central America, in: OEA/Ser.P/XIII.0.2, 14 December 1983, Volume I, Thirteenth Regular Session, Washington, D.C., November 14-18, 1983, p. 84.

66 *Washington Post*, November 18, 1983, p. A27.

67 See, for example, Roger Reed – Nicaraguan Military Operations and Covert Activities in Latin America, Special Report of the Council for Inter-American Security, Washington, D.C., March 16, 1982; G.W. Sand – Soviet Aims in Central America. The Case of Nicaragua, New York 1989.

68 "In Central America, for instance, while the Carter White House initiated military solutions to problems that were fundamentally socioeconomic by increasing military assistance, introducing Pentagon advisors into the region in 1979 and 1980, and reviving the red herring of Cuban-Soviet conspirators, this merely provided

ing to Brown's harsh view, "the right wing extremism of the Reagan administration, its complete reversion to a reactionary Cold War cosmology, was manifested in every dimension of its approach to Central America."⁶⁹

Reagan's first Secretary of State, General Alexander M. Haig Jr., distinguished himself by an aggressive tone toward real and perceived Marxist influence in the region, especially in Nicaragua.⁷⁰ His successor George P. Shultz was a more moderate chief of foreign relations but also without a pronounced interest in the region.

Generally, it is fair to say that the Reagan administration backed its allies in El Salvador and Guatemala, while it embitteredly fought against the left-wing Sandinista regime in Nicaragua. In this context, human rights converted into a highly controversial and even embattled issue. Carter's inconsequent handling of Somocism between 1977 and 1979, which finally resulted in the Sandinista revolution, probably served as an advice for Reagan.⁷¹ Accordingly, the United States was more sympathetic with anti-Communist governments like the ones in Chile, Argentina, El Salvador or Guatemala, and more belligerent with left wing or Socialist countries like Grenada, Cuba or Nicaragua. This practical application of the Kirkpatrick concept may be labeled as a typical US foreign policy, yet during the Reagan period, fundamental rights further became part of the ally-enemy picture. Human rights were turned into an instrument within the struggle for democracy and against Soviet Communism, which was perceived as the "Evil Empire" from a Reaganesque Cold War perspective. Accordingly, Chomsky finds that the level of violations in El Salvador as in Nicaragua dramatically grew with the US involvement, while it seems necessary

the foundations for an extraordinary intensification of U.S. military commitments during the Reagan presidency." Morley, pp. 1, 2.

69 Brown, p. 252.

70 See, for instance, Washington Post, December 5, 1981, p. A20.

71 "For Ronald Reagan and his advisers, the lesson of this experience was that, while human rights should be upheld wherever possible, authoritarian government's (such as Somoza's) were friendlier to U.S. interests than the regimes that often followed them; it therefore lay in U.S. interest to support such authoritarians regardless of how such regimes honoured human rights principles." Walter LaFeber – *The United States and Central America: The Perspective of History*, in: Dermot Keogh (Ed.) – *Central America. Human Rights and U.S. Foreign Policy*, Dublin 1985, p. 18.

to suggest that in the Nicaraguan case he apparently referred to abuses of the Contras.⁷²

In 1984, the so-called National Bipartisan Commission on Central America, installed by Congress and chaired by former Secretary of State Henry A. Kissinger, issued a report on US foreign policy goals in the region. In general terms, the so-called Kissinger Commission portrayed a relatively balanced picture of the Central American situation by taking into account socioeconomic roots for the persisting violence and conflicts.⁷³ The document's view and its conclusions differed from the Reagan administration's approach since it did not perceive national revolutions in the region as a substantial threat to US security interests. The report acknowledged violence and repression employed under the first Salvadoran juntas and summed up that the "...period leading up to the 1982 elections was thus one of both reform and escalating political violence." But the report still held up the image of left- and right-wing violence with a victimized center. However, the Kissinger Report counted more than 30,000 killings of non-combatants in El Salvador since 1979 by adding in parenthesis: "This seems to be a generally accepted minimum figure."⁷⁴ With regard to Guatemala, the bipartisan inquiry emphasized that also due to the CIA involvement in the coup that ousted president Arbenz in 1954, US-Guatemalan relations had suffered. Therefore, Washington's influence on the Guatemalan situation was not as powerful as with El Salvador, Honduras or Costa Rica. The mostly Cuban-sponsored insurgent groups in Guatemala were considered to commit more violent acts than their counterparts in the region.⁷⁵ In relation to Nicaragua, the Bipartisan Commission denounced the Special Tribunals that tried former National Guard members and focused particularly on Nicaragua's system and its ties with the Soviet Union and Cuba, in addition to the government's strategic aims concerning expansion in the region, mainly toward El Salvador.⁷⁶ As a reaction to the report, one goal of US policy became to "...counter the intensive Soviet/Cuban/Nicara-

72 Chomsky, *Turning the Tide*, p. 27.

73 This led the *Washington Post* to speak of an "...unexpected repudiation of the Reagan administration's policy." *Washington Post*, January 8, 1984, p. A1.

74 Report of the National Bipartisan Commission on Central America, March 1984 (Library of Congress), pp. 51, 52, 59.

75 *Ibid.*, pp. 76, 82, 87.

76 *Ibid.*, p. 39.

guan propaganda campaign.”⁷⁷ In accordance, the human rights policy also became absorbed by the war on publicity regarding the Central American situation. The Kissinger Commission report did not meaningfully refer to the role of the OAS in the Central American conflict, and did not mention any function the OAS could play in resolving the conflict.

Obviously, the US was afraid of a Sandinista intervention in Central America⁷⁸ spreading to Costa Rica and Honduras.⁷⁹ Jonas sees Reagan unwilling to democratize the Sandinistas, he just wanted them to “disappear”: “In short, it was not the actions of that government but its *existence* that was intolerable to the Reagan administration.”⁸⁰ Notwithstanding, a secret National Security Decision Directive of 1984 proclaimed to seek the implementation of the democratic commitments made by the Sandinistas to the OAS in 1979.⁸¹ In accordance with its human rights concept, the Reagan administration even must have taken this position of entire opposition against the Sandinistas, because with Kirkpatrick’s theory, the very government of Nicaragua could be described as the genuine institutionalization of human rights violations. Accordingly, Scott considers Nicaragua as the place where the Reagan Doctrine found the “most publicized and controversial application”.⁸² Therefore, any US attempt to pacify the region or negotiate peace seemed not to be sincere, because the

77 National Security Decision Directive 124. Central America: Promoting Democracy, Economic Improvement, And Peace, Top Secret/Sensitive, Washington, D.C., February 7, 1984, p. 3 (NSA files).

78 The 1985 State Department Report on “Revolution Beyond Our Borders” warned on such an intervention. See: Morris H. Morley/James F. Petras – The Reagan Administration and Nicaragua: How Washington Constructs its Case for Counterrevolution in Central America, in: Morley (Ed.), p. 158.

79 National Security Decision Directive 124, p. 1.

80 Susanne Jonas – Reagan Administration Policy in Central America, in: David E. Kyvig (Ed.) – Reagan and the World, Papers from a symposium held March 31–April 1, 1989 by the University of Akron, Department of History, New York 1990, p. 100, emphasis in the original. “...any attempt at revolutionary change can legitimately be stopped by North American force.” Walter LaFeber – The United States and Central America: The Perspective of History, in: Dermot Keogh (Ed.) – Central America. Human Rights and U.S. Foreign Policy, Dublin 1985, pp. 10, 12.

81 National Security Decision Directive 124, p. 2.

82 James M. Scott – Deciding to Intervene. The Reagan Doctrine and American Foreign Policy, Durham/London 1996, p. 152.

Reagan administration was always eager to replace the Sandinistas as an almost personal compromise.⁸³

With the US-inspired counterinsurgency activities, Reagan tried both to destroy the left-wing guerrillas in Central America militarily and to pursue democratic reforms. Though the new term 'war of low intensity' should displace the old notion of 'counterinsurgency', both concepts meant to fight the Communist threat while democratizing the concerned countries.⁸⁴ Reagan's counterinsurgency concept emphasized to 'win the hearts and minds' of the people that should be 'liberated'. While the military war should crush the insurgents, a democratic campaign plus economic support should serve to establish new alliances. The United States further sought to emphasize the human rights pledge of the Nicaraguan Democratic Resistance Forces (Contras), mainly because such commitment would ensure support by US Congress and in the US public.⁸⁵

In El Salvador, for instance, the 'war of low intensity' included political and economic reforms, accompanied by human rights education for the armed and security forces. Nevertheless, those efforts to 'educate' potential perpetrators in human rights standards allegedly derived more from public relations intentions than from the hope of actual implementation.⁸⁶ In addition, counter terrorism activities contributed to a remarkable increase of the CIA budget that expanded faster than the defense budget between 1981 and 1986.⁸⁷

The Reagan administration supported the Salvadoran governments with huge military and economic aid. As briefly mentioned above, due to the extremely high death tolls, particularly between 1980 and 1983,

83 See: Jorge I. Domínguez – US-Latin American Relations during the Cold War and its Aftermath, in: Victor Bulmer-Thomas/James Dunkerley (Eds.) – *The United States and Latin America: The New Agenda*, Institute of Latin American Studies, University of London/David Rockefeller Center for Latin American Studies, Harvard University, Cambridge, Massachusetts/London 1999, p. 44.

84 The 'war of low intensity' should linguistically replace the expression 'counterinsurgency', because the latter was perceived with a negative connotation after its public relations disaster during the Vietnam War.

85 For instance, see: Briefing Memorandum for the Vice President. Meeting with: UNO Leadership, Thursday, March 6, 1986, Office of the Vice President, Confidential Attachment, March 4, 1986 (NSA files).

86 Michael McClintock – *The American Connection Volume I: State Terror and Popular Resistance in El Salvador*, London 1985, p. 338.

87 Morley, p. 8.

US Congress imposed a procedure with which the government had to 'certify' an improvement of the human rights situation in El Salvador. Though the certification procedures partly faced strong opposition, Reagan succeeded with authorizing US support for the Salvadoran authorities. It is interesting to note that besides the linguistic loopholes used by the Reagan administration, all certifications included acknowledgments concerning the imperfect situation of human rights in El Salvador.⁸⁸

In the US State Department reports the Sandinista Revolution was primarily depicted as a result of non-revolutionary or outside forces. Actually, the Department of State presented two versions: first, a Cuban-initiated conspiracy caused the victory of the Sandinistas. The second variant attributed Somoza's overthrow to liberal groups, which were provoked by the assassination of liberal publisher Joaquín Pedro Chamorro.⁸⁹ Americas Watch repeatedly stated that the Reagan administration attacked the human rights practice of the Sandinistas on almost every possible occasion.⁹⁰ However, Americas Watch also made policy with its publications, although it appropriately accused the Reagan administration's double standards by explicit reports.⁹¹ Likewise, US criticism of Nicaragua was particularly harsh in regard to human rights. US diplomats repeatedly stressed the promise made by the Sandinistas in 1979, when they announced to convoke democratic elections toward the OAS.⁹² US diplomacy singled out three main categories to blame Nicaragua's human rights record: the repression against the Miskito Indians, the treatment of dissidents, and free-

88 Kramer, p. 236.

89 Morley/Petras, p. 160.

90 Kramer, p. 238.

91 For instance: Americas Watch – U.S. Reporting on Human Rights in El Salvador: Methodology At Odds With Knowledge, New York, June 1982; Americas Watch Committee – Guatemala Revised: How the Reagan Administration Finds "Improvements" in Human Rights in Guatemala, New York City/Washington, D.C., September 1985. See Washington Post, July 16, 1985, p. A12; Washington Post, February 10, 1987, p. A17.

92 Chomsky, however, points out that the repeated references to such promise were based on a US disinformation campaign since the Sandinistas in fact had informed Secretary General Orfila on their plans to convoke elections but that the concerned telex did not include any reference to a specific timing or the establishment of a "true democracy". The author suggests that Chomsky's remark must be interpreted within the Cold War circumstances. See: Chomsky, *Turning the Tide*, p. 73.

dom of religion.⁹³ The Kissinger Commission, referring to Amnesty International findings, detected that the most widespread human rights abuses were committed against the Miskito, Sumo and Rama Indians of the Atlantic Coast.⁹⁴ UN Ambassador Kirkpatrick called human rights violations against the Miskito population the most massive in Central America and spoke of “concentration camps”. Reagan compared the mistreatment of the Miskito Indians with Nazi terror and “virtual genocide” (see chapter IV. 2.).⁹⁵ In contrast, during the first years of the Sandinista regime a quite positive human rights situation was attested by important NGOs.⁹⁶ Former Commissioner Farer described the US perception of the Nicaraguan situation somewhat cynically but accurately as a “comic-book version of Nicaraguan realities.”⁹⁷

93 In 1986, the Nicaraguan Association for Human Rights (ANPDH) was founded with substantial financial support from US Congress in order to monitor the human rights situation within the conflict between the Nicaraguan government and the Contras. Nevertheless, such association primarily focused on abuses of the Sandinistas.

94 Report of the National Bipartisan Commission on Central America, March 1984, p. 39.

95 Meier, pp. 369, 370. Also due to the author's German nationality, he finds it inappropriate that many comparisons between real or alleged human rights abuses particularly in Nicaragua and atrocities committed by the German Nazis found entrance in the public debate. In this regard, he does not want to discuss the sometimes embattled controversy on totalitarianism theories. However, while there are some comparisons, which seem to be comprehensive – for instance to see a link between forced disappearances and the so-called *Nacht-und-Nebel* practice – the crimes committed during the ‘Third Reich’ still represent a unique and incomparable example for contemporary human degeneration. Nevertheless, this shall not serve to euphemistically downgrade systematic violations in the present.

96 “The major human rights monitoring organizations – Amnesty International, Americas Watch, and the Human Rights Commission of the Organization of American States – were invited by the revolutionary government to visit Nicaragua on various occasions. While their reports expressed concern over some matters such as the occasional arbitrary short-term imprisonment of political opponents and suspected subversives, they did not corroborate the Reagan Administration portrayal of Nicaragua as one of Latin America's most flagrant human rights offenders.” Stephen M. Gorman/Thomas W. Walker – The Armed Forces, in: Thomas W. Walker (Ed.) – Nicaragua: The First Five Years, New York 1985, pp. 113/114.

97 Ernest Van den Haag/Tom J. Farer – U.S. Ends and Means in Central America. A Debate, New York 1988, p. 67.

In Guatemala – as in El Salvador – the right celebrated Reagan's election, "...anticipating a return to the good old days of close U.S.-Guatemalan relations."⁹⁸ For some, Guatemala's dictatorship included the worst human rights abusers in the Western Hemisphere. During the Carter administration, Guatemala had not received military assistance. Reagan, nevertheless, supported the Guatemalan regimes in their battle to defeat left-wing insurgency. With some tricks, Reagan provided economic and even military aid to Guatemala and reversed Carter's opposition to international loans.⁹⁹ The US saw in Guatemala that leftists, supported by the Soviet Union and Cuba, acted with violence, which provoked overreactions from the right. In May 1981, John Bushnell, Acting Assistant Secretary of State for Inter-American Affairs, declared that with regard to the strong Communist support for the Guatemalan insurgency, the US had to assist the government.¹⁰⁰ In December 1982, Reagan met with dictator Ríos Montt and commented the encounter by calling charges of widespread human rights violations in Guatemala as the famous "bum rap".¹⁰¹

Mower states that the position of the US administration concerning the problematic human rights records of the governments in El Salvador and Guatemala caused acute doubts about Reagan's dedication to human rights.¹⁰² It remains plausible to highlight the fact that the United States applied the so-called Reagan Doctrine when it fought against the left-wing Sandinista government in Nicaragua, yet it strongly supported the Salvadoran authorities in their battle against the Marxist influenced FMLN forces. This example of anti-subversive and anti-governmental engagement of the US in the isthmus illustratively demonstrates the implementation of Kirkpatrick's concept. In this context, the handling of both countries by the IACHR is certainly of interest and will be discussed further.

In 1989 the United States carried out a military intervention against Panama's government controlled by General Noriega who had

98 Thomas Carothers – *In the Name of Democracy. U.S. Policy Toward Latin America in the Reagan Years*, Berkeley/Los Angeles/Oxford 1991, p. 59.

99 Kramer, p. 237.

100 Carothers, p. 61.

101 Kramer, pp. 236/237; Chomsky, *Turning the Tide*, p. 31.

102 A. Glenn Mower, Jr. – *Human Rights and American Foreign Policy, The Carter and Reagan Experience*. In: *Studies in Human Rights* Number 7, Westport 1987, p. 36.

been charged in the US for drug trafficking. It must be emphasized that the invasion in Panama, discussed in depth in chapter IV. 2., was the first unilateral intervention by the United States that was not motivated by anti-Communism.¹⁰³

In general, the character of the Organization of American States as a US-Latin American organization shifted to a more diversified institution when many Caribbean countries that had become independent joined the organization in the 1970s and the early 1980s.¹⁰⁴ The entry of the new mainly Anglophone islands led to rise the number of Member States from 21 (1948) to 33 (1990). A Latin American diplomat argued that the entrance of many Caribbean Members caused that the OAS lost its character as an “American” organization.¹⁰⁵

Further, the Reagan administration generally distrusted and withdrew support from many international organizations, including the OAS.¹⁰⁶ After taking office, the new US government found that its two-thirds quota contribution to the OAS Regular Fund were too expensive. Consequently, it decided to cut its payment by dropping one percentage point each year without consultation of the OAS organs or the other Member States. In combination with the reluctant payment behavior of other big Member States like Brazil, Mexico, Argentina and Venezuela, this caused an even more serious crisis than the chronic financial calamities traditionally faced by the OAS.¹⁰⁷ Unilateral actions of the United States like the support for Great Britain during the Falkland/Malvinas war, the invasion in Grenada, and the absence of a substantial OAS policy on the Central American conflict,

103 Forsythe, p. 81; Noam Chomsky – *Terrorizing the Neighborhood: American Foreign Policy in the Post-Cold War Era*, Stirland, Scotland/San Francisco, USA 1991, p. 19.

104 Between 1979 and 1984, the Commonwealth of Dominica, St. Lucia, St. Vincent, Grenadines, Antigua and Barbuda, the Commonwealth of Bahamas and St. Christopher and Nevis became new OAS Members.

105 Interviews.

106 “This is a sphere in which the Reagan ideology, with its suspicion of multilateral diplomacy and its doubts about the motives of Third World states, fits quite snugly with the refusal of previous administrations to widen the range of international agencies’ functions.” Miller, p. 18. Guest, p. 312.

107 Wilson/Dent, p. 35. See Washington Post, June 28, 1988, p. A13. Stoetzer harshly criticizes the Reagan administration’s political outlook on the OAS: The US reluctance to pay its quota caused a serious crisis of the organization as a result of an “...embarrassing hostility for all international organizations, not only the OAS.” Stoetzer, p. 75.

reflected the almost apathetic US position within the inter-American system. The US-American indifference toward the OAS was somewhat mirrored by the administration's decision to not host the 1987 General Assembly as planned in San Francisco – explained by the financial shortcomings of the State Department.¹⁰⁸ The Assembly of 1987 was considered to be important because the Esquipulas II Peace Plan on Central America was to be discussed. What seemed to be a reasonable decision regarding the tight budgetary situation of the US State Department facing serious budget cuts resulted simultaneously in a diplomatic loss of credibility. Commentators stressed that even the small island Saint Lucia had hosted the Assembly in 1981, yet the meeting not be set up in San Francisco. This caused an additional loss of confidence among Latin Americans in the US support for the OAS.

In general terms, Reagan was unsympathetic to the OAS in general and to the inter-American human rights system in particular.¹⁰⁹ As former IACHR chairman Tom Farer stated: "The big change is from Carter to Reagan."¹¹⁰ Likewise, a commentator spoke of a 180-degree shift of human rights in US foreign policy with the election of Reagan.¹¹¹ Nevertheless, the incoming administration considered the Organization of American States as somewhat useful and wanted it to deal with regional issues rather than the United Nations.¹¹² This somewhat anemic priority given to the OAS mirrored the Reagan administration's initial approach toward the organization and serves as an explanation as to why the OAS subsequently lost most of its little influence. The United States regarded the OAS as useful but failed to support it financially and politically. In the end, the Salvadoran case illustrates that with its lack of support for the organization, US policy

108 Washington Post, October 14, 1987, p. A3; October 17, 1987, p. A17. A former US diplomat reports that the Assistant Secretary of State did not want to pay one million dollar to cover the gathering in San Francisco and thus sabotaged it. Interviews.

109 Forsythe, p. 86.

110 Interview with Dean Farer, Denver/Colorado, August 30, 1999.

111 Interviews.

112 "The United States should not wish to see the OAS so weak as to cause the United Nations to assume jurisdiction in the f[irst? Word missing, K. D.] instance when regional problems arise in Latin America." Memorandum, Subject: Interim Report on the Bureau on Inter-American Affairs and Related Bureaus and Policy Areas, Department of State, Washington, D.C., Office of the President-elect, January 12, 1981, p. 8 (NSA files).

helped create the scenario it was attempting to avoid: The OAS was too marginalized to act, so the United Nations eventually succeeded with peace negotiations. A US document of the incoming administration also proposed merely to show interest in the inter-American system, without real commitment. Nevertheless, the new administration wanted to draw US and Latin American attention back to the OAS, but without any substantial dedication of the US.¹¹³ Consequently, the operation failed.

The memorandum prepared before Reagan entered office recommended “[a]ll speeches and official statements on Latin America by officials of the Human Rights area must be cleared by the ARA Assistant Secretary.”¹¹⁴ As mentioned before, the ARA was considered to be a more pragmatic institution within the State Department, which did not place a high priority on human rights concerns. This document emphasized that vital US interests were to be a higher priority when in conflict with human rights matters.¹¹⁵ Reagan himself presented the main goals of US foreign policy at a meeting of the OAS Permanent Council in 1982: He depicted the OAS principles of democracy, self-determination, economic development, and collective security as congruent with US foreign policy.¹¹⁶ On the other hand, Communism was considered the mortal sin and categorically associated with ‘totalitarianism’ by the US:

A new kind of colonialism stalks the world today and threatens our independence. It is brutal and totalitarian. It is not of our hemisphere, but it threatens our hemisphere and has established foothold on American soil for the expansion of its colonialist ambitions.¹¹⁷

With these strong remarks, addressed to the OAS Permanent Council, Reagan unequivocally referred to the leftist governments in Cuba,

113 Ibid., pp. 8, 9.

114 Memorandum, Subject: Interim Report on the Bureau on Inter-American Affairs and Related Bureaus and Policy Areas, Department of State, Washington, D.C., Office of the President-elect, January 12, 1981, p. 7.

115 “Internal policy-making procedures should be structured to ensure that the Human Rights area is not in a position to paralyze or unduly delay decisions on issues where human rights concerns conflict with other vital U.S. interests.” Ibid.

116 Palabras del Presidente de los Estados Unidos de América, in: OEA/Ser.G/ACTA 483/82, February 24, 1982 (Consejo Permanente), p. 3.

117 Ibid., p. 7.

Grenada and Nicaragua, which had become enemies of his administration.

During the 1980s, OAS Member States in which human rights violations occurred were not mentioned by name in the General Assembly resolutions on the IACHR reports.

Initially, the Reagan administration suggested highlighting positive achievements in human rights regarding individual countries rather than sanctions for bad human rights records.¹¹⁸ This was precisely what happened with the OAS resolutions on human rights matters during the 1980s: no Member State was openly accused; the countries named in the OAS documents were only mentioned positively, such as the resolution sections on South American countries that returned to democracy. In conclusion, deliberately or accidentally, this constituted an adaptation of US policy for the Organization of American States. To this end, in 1981 the OAS representative of Trinidad and Tobago, Victor C. McIntyre, described the Commission as a “watchdog, a bulldog for the people’s rights” but in consideration of the approved resolution on the IACHR reports, it was merely a “toothless bulldog”, an organ that only had a big bark but no bite.¹¹⁹

During the Reagan years, the OAS resolutions dealing with human rights matters shifted toward democracy, a notion that gradually replaced the emphasis on human rights protection regardless of the political system. Nonetheless, the term ‘democracy’ was very vaguely defined only by the mere holding of elections – a sort of key to enter the club of democratic nations.¹²⁰

118 Memorandum, Subject: Interim Report on the Bureau on Inter-American Affairs and Related Bureaus and Policy Areas, Department of State, Washington, D.C., Office of the President-elect, January 12, 1981, pp. 7, 10 (NSA files).

119 OEA/Ser.P/XI.0.2, 4 diciembre 1984, Volumen II, Undécimo Período Ordinario de Sesiones: Castries, Santa Lucía, Del 2 al 11 de diciembre 1981; Actas y Documentos, Vol. II, 2a parte, Primera Comisión, pp. 169/170, 174.

120 It seems to be interesting to compare the far-reaching and demanding principles and standards of democracy included in the Declaration of Santiago of 1959 with Reagan’s reduced notion of democracy. In this regard, the Declaration named 1) the rule of law principle, separation of powers, 2) free elections, 3) perpetuation in power only with a fixed term, 4) a system of freedom for the individual, social justice, based on basic human rights, 5) effective judicial procedures to protect human rights, 6) no systematic use of political proscription, 7) freedom of the press, radio, TV and freedom of information and expression. Summarized as in Medina Quiroga, p. 56.

Furthermore, the General Assembly of 1986 adopted a resolution on “Human Rights and Democracy“. In that document, the OAS reaffirmed “...the inalienable right of all the peoples of the Americas freely to determine their political, economic and social system without outside interference, through a genuine democratic process and within a framework of social justice in which all sectors of the population will enjoy the guarantees necessary to participate freely and effectively through the exercise of universal suffrage.”¹²¹ Thus, the State’s right to “choose freely” its political and socioeconomic system was limited to one condition: it must be the outcome of democratic elections. Moreover, the text reflected Reagan’s stand on democracy in Latin America: while the resolution indirectly condemned Nicaragua, it absolved the governments of El Salvador and Guatemala because they had allowed elections, in spite of how questionable their organization and results might have been. In general, this resolution reiterated the US administration’s priority to legitimize authoritarian regimes through formal elections by which those States were declared democratic. Likewise, in the following year, the General Assembly resolution on the IACHR Annual Report proclaimed that “...the democratic system is essential to the establishment of a political society wherein human rights can be fully realized...” Despite the expressed concern over the persistence of serious violations and the “unequivocal support” for the IACHR, the document again did not name any single Member State.¹²² In 1989, the main political organ of the OAS declared the exercise of representative democracy as the best guarantee of human rights.¹²³

During the 1980s, the Meeting of Consultation of Foreign Ministers, the OAS organ to settle conflicts, did not meet to deal with the Central American crisis or with the US invasion in Grenada. It is compelling to compare this inaction with the Foreign Minister meetings in 1978 and 1979 in which the Nicaraguan situation was dis-

121 AG/RES. 837: Human Rights and Democracy, in: IACHR/IACtHR – Inter-American Yearbook on Human Rights 1986, Dordrecht 1988, pp. 478/480.

122 AG/RES. 890: Annual Report of the Inter-American Commission on Human Rights, in: IACHR/IACtHR – Inter-American Yearbook on Human Rights 1987, Dordrecht 1990, pp. 908-912.

123 AG/RES. 1022 (XIX-0/89): Reports of the Inter-American Commission on Human Rights, in: IACHR/IACtHR – Inter-American Yearbook on Human Rights 1989, Dordrecht 1993, p. 886.

cussed extensively. The incapacity of the Meeting of Consultation to adopt substantial measures concerning a friendly settlement in the Panamanian case in 1989 eventually ushered in the unilateral US invasion in Panama.¹²⁴ By 1984, investigations on the so-called 'Orfila scandal' took more time and gained more attention than the OAS efforts to look for peace in Central America – clearly a sign of the politically paralyzed and inward focus of the organization at the time.¹²⁵ In addition, due to the perceived lack of efficiency and financial extravagancies of officials of the organization, the OAS enjoyed a quite negative image in the US but also an increasingly unenthusiastic one in Latin American countries.¹²⁶ Furthermore, the human rights topic was not a top priority for the US mission at the OAS.¹²⁷ In the late-eighties and early nineties, the OAS faced a serious crisis caused by the budgetary calamities and its political marginalization during the 1980s. However, the decent work of the OAS regarding the observance of the electoral process in Nicaragua in 1990 and the subsequent demilitarization of the Contras helped to restore some respect for the necessity of such an inter-American body.¹²⁸

Tom Farer, chairman of the IACHR between 1980 and 1982, fiercely criticized Jeane Kirkpatrick's vision of human rights, particularly with regard to Latin America.¹²⁹ This affected the position of the new US administration toward the IACHR. Since the Reagan administration took office, the relations between the Commission and the United States government had worsened.¹³⁰ There had been reported

124 Lothar Brock – Die Organisation Amerikanischer Staaten, in: Ulrich Albrecht/Helmut Vogler (Eds.) – *Lexikon der Internationalen Politik*, Munich/Vienna 1997, p. 391.

125 Secretary General Orfila was accused of having received a salary from a Washington law firm while still serving as head of the OAS. See *Washington Post*, April 15, 1984, pp. A26, A27. Also the media coverage on the Orfila issue of the *Washington Post* was disproportional compared to its reports on the OAS. See Memorandum, From: Francis X. Gannon, OAS Consultant on Public Affairs, to: Their Excellencies, OAS Permanent Representatives and Permanent Observers, Subject: Report on Effect of OAS Activities on the U.S. Press and Public, May 23, 1984, p. 17.

126 See *Washington Post*, March 6, 1985, p. F11; June 10, 1985, p. B12.

127 Interviews.

128 Forsythe, p. 89.

129 See Tom J. Farer – *The Grand Strategy*, pp. 32-43.

130 Letter from Tom J. Farer to Everett E. Briggs, Deputy Assistant Secretary for Inter-American Affairs, New Jersey, January 8, 1982, p. 3.

attempts of the US government to intimidate and even to oust the belligerent US member Farer from the IACHR because of his activism. In general terms, former Commissioner Farer found that the IACHR's influence began to erode "...as soon as the Reagan people were in."¹³¹ Farer points out general indifference, "...if not hostility, stemmed from more than the predominance in Ronald Reagan's Washington of Cold War concerns and a fierce determination finally to win."¹³² Likewise, Mexican Commissioner César Sepúlveda found in 1982 that the Reagan administration's approach contributed to a worsening of the human rights situation.¹³³ A former IACHR official correctly differentiated by arguing that the Commission received strong support when it was convenient and less backing if it was not convenient.¹³⁴ Of course, when the IACHR accused Reagan's declared enemy, the Sandinistas, the human rights complaints of the Commission were highly convenient. A demonstration of Reagan's human rights position was the nomination of Bruce McColm who eventually succeeded the confrontational Farer (see chapters II. 2. and IV. 2.).

In a declassified telegram from 1983, the Department of State clearly demonstrated its stand on the usefulness of the IACHR:

THE UNITED STATES STRONGLY SUPPORTS THE USE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (THE COMMISSION) AS A FORUM IN WHICH TO ADDRESS HUMAN RIGHTS PROBLEMS. ITS WORK IS A USEFUL MEANS OF FOCUSING PUBLIC ATTENTION ON HUMAN RIGHTS ISSUES IN NICARAGUA.¹³⁵

In addition, the US Secretary of State reportedly sought to denounce the Sandinistas with petitions from Nicaraguan Jews against the government. The confidential telegram recommended that claims should be brought up from private individuals or non-governmental organizations. The goal of the State Department was to launch complaints against the Sandinista regime before the Inter-American Court of Hu-

131 Interview with Dean Farer, Denver/Colorado, August 30, 1999.

132 Farer, in: Harris/Livingstone (Eds.), p. 60.

133 Sepúlveda, p. 59.

134 Interviews.

135 From Secretary of State, Washington, D.C., to AMEmbassy Managua, Subject: Jewish Claims Before the Inter-American Human Rights Court, October 1983, p. 1 (Original in capital letters, NSA files).

man Rights by a third party, since the US, which was not party to the Convention, could not present such a petition.¹³⁶ This document demonstrates that the US attempted to hold accountable the Nicaraguan government from a Jewish point of view. It is possible that this might have been a strategy to gain influential support within the US, where the Jewish community was considered to be a powerful factor, especially when taking into account the opinion leading media and decision-making processes. If this was the case, it should be of interest to analyze the respective media concerning its coverage of the Nicaraguan situation.

With regard to the above-mentioned instrumentalization of human rights, the IACHR commented on the illicit employment of basic rights for other ends: In its Annual Report for 1986-1987, the Commission strongly condemned the "...use of the human rights topic as an instrument of political struggle, either within the countries or by some countries against others..." and described this practice as "...serious perversion of the international legal system of human rights."¹³⁷ The IACHR did not name countries or other actors involved in this political struggle, but it was obviously directed to Central America, and most probably to the US.

In conclusion, Reagan's policy was *per definitionem* more ideological than Carter's. Although Kirkpatrick's concept provided a more ideological basis for a human rights policy, the latter recalled to Kissinger's realist diplomacy. Central America was perceived as the main region to fight expanding Communism. It was believed that El Salvador had to be supported in its efforts to prevent the leftist insurgents from assuming power. It is admittedly cynical but not completely absurd to assume that the human rights violations committed by governmental forces merely constituted a publicity problem for US policy. Further, Nicaragua under the Sandinistas became a target of US intelligence, military, and political attacks. The concept of "human

¹³⁶ Ibid., p. 2.

¹³⁷ Annual Report of the IACHR 1986-1987, OEA/Ser.L/V/II.71 Doc. 9 rev. 1, 22 September 1987, Original: Spanish, pp. 197/198. In 1988, the General Assembly resolution on the IACHR report mentioned the Commission's criticism on the instrumentalization of human rights in the "considering" section. AG/RES. 950 (XVIII-0/88): Annual Report of the Inter-American Commission on Human Rights, in: OEA/Ser.P/XVIII.0.2, 10 March 1989, Volume I, Eighteenth Regular Session, San Salvador, El Salvador, November 14-19, 1988, p. 81.

rights” became a tool during the 1980s: In US eyes, Nicaragua as well as Cuba incarnated institutionalized human rights violators, while El Salvador witnessed a continuing ‘improvement’ in this regard, and consequently an enduring US support. The broad attention paid to the human rights issue in the 1980s, particularly in the Salvadoran civil war, also was a result of the extensive media interest and the involvement of numerous human rights organizations and some questionable ‘solidarity’ groups. In regards to the OAS and the IACHR, the Reagan administration tentatively tried to use both for their own ends. However, the United States finally disregarded the OAS and thus contributed to its eroding influence. Attempts to influence the Commission were not fruitful either, but indirectly the lack of decided support from the US also had a negative effect on the Commission’s stand during the 1980s – it could not play such a decisive role in the Central American conflicts as it had done before Reagan took office.

In accordance, the actions of the Inter-American Commission on Human Rights in the Central American conflicts will be explored in more detail in the chapters that follow.

IV. 2. The Inter-American Commission on Human Rights and Central America during the 1980s

In both Western Europe and the United States during the 1980s, public attention was focused on the Central American crisis. Pressure groups attempted to influence decision-makers in Washington, D.C. to keep the US out of El Salvador and Nicaragua. In particular, the human rights violations committed by – or attributed to – the governments and guerrillas of these two countries received a high degree of media interest and coverage.

In spite of this, the OAS did not discuss the urgent situation in Central America sufficiently. This failure is evident in the peace talks of the Contadora process and the Esquipulas peace negotiations, both of which ultimately contributed to resolving the armed conflicts in the region. When Secretary General Alejandro Orfila announced his resignation in November 1983, he disappointedly described the OAS as “increasingly irrelevant” to regional crisis.¹³⁸ Furthermore, Orfila’s withdrawal was accompanied by charges of alleged irregularities: The

¹³⁸ Washington Post, November 22, 1983, p. F1.

aforementioned 'Orfila incident' largely dominated the media coverage on the OAS but also led to an animated internal debate. Accordingly, in addition to the skeptical perception of the OAS in the US, the reputation of the organization deteriorated in Latin America as well.¹³⁹

In 1985, the Protocol of Cartagena de las Indias was adopted by the OAS General Assembly to strengthen the organization and to emphasize its commitment to democracy. The adoption of this reform protocol was applauded in Latin America as a new step to strengthen the organization. Though the Protocol of Cartagena entered into force in 1988, it did not substantially improve the institutional efficiency as expected. Ultimately, mainly national or regional developments contributed to settling the conflicts in Nicaragua and El Salvador. The United Nations eventually strengthened those peace efforts – the OAS played a marginal role.

Throughout the 1980s, the main problem facing the Organization of American States was financial: Reagan's withdrawal of support from international organizations coupled with the financial calamities of Latin America caused by the debt crisis resulted in a near financial collapse. Since the US was reluctant to pay its quota – two-thirds of the Regular Fund – the chronic financial bottleneck of the OAS ended up in a serious crisis in the late eighties.¹⁴⁰ After the reductions that cut the organization's bureaucracy to merely 1,000 workers in the mid-eighties, the OAS had to fire another 269 staff employees in 1988/1989. The financial emergency of the organization also threatened activities within the Central American peace processes.¹⁴¹

Naturally, the IACHR was affected by the political and financial crisis of the 1980s that weakened its position in the hemisphere and lessened its impact on the human rights situation in some countries. During that decade, the IACHR Special Reports mainly dealt with

139 Washington Post, April 15, 1984, pp. A26/A27.

140 Washington Post, March 4, 1988, p. A25; June 28, 1988, p. A13; July 20, 1988, p. A13; July 29, 1988, p. A19; November 9, 1988, p. A13.

141 Washington Post, December 30, 1988, p. A4. Together with the United Nations, the OAS was in charge of taking care of the disarmament of the Contra rebels. In May 1990, however, the organization got into trouble because the House Democrats in US Congress opposed a bill to provide financial aid to Panama and Nicaragua through the OAS in order to change the Bush administration's policy of military support to El Salvador. Washington Post, March 30, 1990, p. A18; May 12, 1990, p. A16.

Guatemala, Nicaragua, Cuba, Chile and Paraguay and particularly with Suriname and Haiti, which mostly were preceded by on-site observations. In addition, the Commission addressed issues like the laws of 'full stop' or 'law of invalidity' in post dictatorial countries (in this case in Argentina and Uruguay).¹⁴² In 1983, the Seventh Report on Cuba provoked criticism from anti-Castro militants and the US government since it mentioned Cuba's positive record regarding socio-economic rights, in spite of the fact that it clearly condemned persisting violations of civil and political rights.¹⁴³

The Commission also monitored the Chilean human rights situation, specifically in the case of the 1985 Special Report. This fourth report on Chile was prepared without an on-site observation and covered the development of the Chilean human rights situation between 1973 and 1985. The highly praised document¹⁴⁴ revived the well-known confrontation between the Commission and the military government of General Pinochet.¹⁴⁵ In August 1985, the Chilean government sought to attack the Commission again by reducing its competence.¹⁴⁶ At the 1985 General Assembly, the remarkable Special Report on Chile faced decided opposition on part of the Chilean delegation. As the Assembly was approaching, the Chilean government con-

142 These laws as well as other amnesty decrees served to prevent trials against members of the armed forces who were engaged in human rights violations during the preceding dictatorships. The military usually defended this sort of law by a reference to the need for a national reconciliation through an amnesty law. In fact, however, the sole reason typically for these laws was to protect perpetrators of gross human rights violations.

143 The IACHR files indicate that there might have been problems with the advanced distribution of the Seventh Report on Cuba (1983) to journalists due to internal mistakes of the IACHR Secretariat.

144 Cecilia Medina – The Role of Country Reports in the Inter-American System of Human Rights, in: Harris/Livingstone (Eds.), p. 118.

145 The Chilean authorities refused to receive the 1985 Chile Report and sent it back with the remark "return to sender" (IACHR files).

146 The Chilean delegation wanted to limit the IACHR's powers to its status as a "consultative body" but faced decided opposition from Barbados, Colombia, Venezuela, Mexico, and Costa Rica. Further, the president of the Permanent Council, Pablo Mauricio Alvergue, spoke as Representative of El Salvador and backed the Commission's position as well. See OEA/Ser.G/ACTA 627/85, 30 agosto 1985: *Solicitud de la delegación de Chile para que el Comité Jurídico Interamericano absuelva una consulta jurídico-técnica sobre las funciones y competencia de la C.I.D.H.*, pp. 11, 18, 26, 31, 34.

sulted other delegations in order to prevent a resolution on the report. Besides still referring to the historical background, which meant the foregoing Allende government, the Chilean delegation also blamed the IACHR for its use of mainly biased sources.¹⁴⁷ The Chilean mission insisted on a separate voting on the resolution article dealing with the Chile report and ultimately succeeded with keeping out the document of the resolution. The Commission had also transferred a special document on the human rights situation in Suriname that was not as successful as Chile, yet it was mentioned in the General Assembly resolution on the Commission's reports. In the end, the General Assembly of 1985 merely mentioned the outstanding report on Chile in the 'Having seen' section and did not refer to it in the resolution itself, though it did name the Special Report on Suriname.¹⁴⁸ This led the Barbadian delegate to accuse the OAS of discriminating small countries: If Suriname had been a big Member State, it would surely have gathered enough votes to keep its name out of the resolution as well, and further "...history will question the basis on which this distinction was made." The Barbadian criticism was shared by the delegate of Antigua and Barbuda.¹⁴⁹ It is true that Chile would not have been able to keep its name out of the resolution if it had been a small country. It is a fact that the larger countries favored themselves and at times excluded the Caribbean nations. In this case, the well-prepared Chile report certainly merited an explicit mentioning in the General Assembly resolution but it did not happen. In contrast, the IACHR did a good job in regards to the human rights situation in Chile, which possibly was at times a result of the personal dedication of certain personalities on the Commission. However, this dedication was not matched on the General Assembly level.

147 Observations of the Chilean Government regarding the report of the Inter-American Commission on Human Rights with reference to the human rights situation in Chile (AG/doc. 1919/85), General Assembly, Fifth Regular Session, December 5, 1985, Cartagena de las Indias, OEA/Ser.P, AG/doc. 2005, 7 December 1985, Original: English, pp. 1, 4, 13.

148 AG/RES. 778 (XV-0/85), Annual Report of the Inter-American Commission on Human Rights, in: Proceedings, OEA/Ser.P/XV.0.2, 2 April 1986, pp. 38/39.

149 OEA/Ser.P/XV.0.2, 22 octubre 1986, Volumen II, Parte I, Décimoquinto período ordinario de sesiones, Cartagena, Colombia, Del 5 al 9 de diciembre de 1985, Sesiones Plenarias, pp. 54-68. Quote of the Barbadian representative on page 63.

The relations between the IACHR and the Inter-American Court of Human Rights (IACtHR) in San José left much to be desired during the 1980s. Mainly due to personal jealousies and institutional concerns, the communication between the Court and the Commission was officially polite but not substantial – some observers made reference to “tensions”. Some at the Commission feared that the Court would compete with the IACHR on its title as ‘human rights champion’ in the hemisphere and seemed to doubt the judges’ real dedication to the cause of human rights.¹⁵⁰ Reportedly, the General Secretariat did not have any relation to the Court, which may explain the distant relationship of the entire organization to the Inter-American Court.¹⁵¹ In contrast, some members of the Court and the Commission attempted to achieve a better cooperation between both institutions.¹⁵² The Commission’s reluctance, however, to send petitions to the IACtHR was problematic since the Court depended on cases sent to it by the IACHR.¹⁵³ Between 1979 and 1984, the Court only received five cases.¹⁵⁴ Nevertheless, in 1988, the Court succeeded with a high-profile judgment on the transcendental case of the disappearance of Manfredo Velásquez Rodríguez in Honduras.¹⁵⁵ It is no coincidence but rather an illustration of the relationship between the Commission and the Court that the Velásquez Rodríguez case entered the Court by accident. It is curious to look at the circumstances that enabled this historic judgment: Apparently, the IACHR Secretariat sent a case ran-

150 Interviews.

151 Interviews.

152 See: Letter from Thomas Buergenthal, to Tom Farer, Washington, D.C., February 23, 1982 (IACHR files).

153 Interview with Adolfo Pérez Esquivel, Buenos Aires, June 16, 2000; Interviews.

154 Thomas Buergenthal – Juridical Interpretation of the American Human Rights Convention, in: OAS (Ed.) – Human Rights in the Americas, p. 253. The so-called Viviana Gallardo case (1981) was handled by the Court but it was initially considered to be a case for the Commission. See: Letter from Luis Demetrio Tinoco Castro, to Edmundo Vargas Carreño, San José/Costa Rica, July 8, 1981 (IACHR files).

155 In October, a confidential CIA document (apparently even a secret paper) called the persons who testified before the Commission with regard to the Velásquez-Rodríguez case “leftist subversive”, “radical leftist”, or even “terrorist”. Central Intelligence Agency. Country: Honduras. Subject: Case against Honduras at the Interamerican Court of Human Rights, October 1987, (Approved for release August 1997. Document does not contain evaluated Intelligence information, NSA files).

domly to the Court – a symbolic gesture of cooperation between the two organs more than anything else. The judges of the Court, however, took advantage of the disordered files and eventually achieved a major step in international human rights law. In the end of the decade, the relationship between the two main bodies of the inter-American human rights system had improved. A former high-ranking IACHR official attributed this improvement primarily to the work of IACHR chairman Leo Valladares.¹⁵⁶ The IACtHR condemned the Honduran government with a historical judgment on the crime and requested the authorities to pay compensations to the victim's relatives.¹⁵⁷ The judgment was widely seen as a major improvement regarding the right to truth and still serves as a reference point in respect to human rights law.

In general, it is not surprising that the IACHR did not play a substantial role in the Central American peace negotiations since the OAS as a whole was marginalized in that debate.¹⁵⁸ By and large, the organization's sphere of influence and action was mainly reduced to contributing supporting statements to the peace talks of the Contadora and Esquipulas processes.¹⁵⁹

The 1985-1986 Annual Report interpreted the denial of political rights as a factor that fueled terrorist acts against governments. The

156 Interviews.

157 See Washington Post, October 9, 1988, p. D6. Also: Washington Post, January 21, 1988, p. A28.

158 However, the IACHR lately again became involved in the peace process through its mediating role after the agreement of Sapoá in 1988, which was part of the Esquipulas peace process.

159 The General Assembly resolutions dealing with the Central American crisis illustratively reflect the organization's marginal role: the OAS merely expressed its support for the peace initiatives of the Contadora group and the Esquipulas process, respectively. See: AG/RES. 675 (XIII-0/83): Peace Efforts in Central America (1983); AG/RES. 702 (XIV-0/84): Peace Efforts in Central America (1984); AG/RES. 770 (XV-0/85): Communication of the Contadora Group with regard to Efforts on behalf of Peace in Central America (1985); AG/RES. 831 (XVI-0/86); AG/RES. 871 (XVII-0/87): Communication from the Foreign Ministers of the Contadora Group and the Support Group on their Peace Negotiations in Central America, (1987); AG/RES. 936 (XVIII-0/88): Communication from the Foreign Ministers of the Contadora Group on their Peace Negotiations in Central America (1988); AG/RES. 937 (XVIII-0/88); AG/RES. 993 (XIX-0/89); AG/RES. 1057 (XX-0/90); AG/RES. 1122 (XXI-0/91): Report on the Procedure for Establishing Firm and Lasting Peace in Central America (1988-1991).

report reiterated the “...organic relation that exists between representative democracy and human rights...” and found that “...authentic social peace and respect for human rights can only be found in a democratic system.”¹⁶⁰ Although these comments hardly contrasted from previous judgments of the Commission, a changed atmosphere seems to be notable. In the reports of the late 1970s and early 1980s, the IACHR focused especially on the socioeconomic causes for the prevailing violence. This emphasis on representative democracy mirrored the prevailing atmosphere in the region. At the same time, however, this exclusive democratic prerequisite for human rights mainly considered the political system and not the actual socioeconomic conditions as foregoing reports did, particularly between 1979-1981. On the other hand, it is possible that the Commission concentrated more on the drafting of the Additional Protocol on Economic, Social and Cultural Rights than on analyzing the concrete impact of those rights in their cases. The emphasis on political participation rather than on socioeconomic rights fitted, oddly enough, in Reagan’s Central America approach.¹⁶¹

IACHR performance in Nicaragua, Guatemala and Panama

The 1978 IACHR Report on Nicaragua and the extraordinarily fast reaction and transmittal of the report to the Meeting of Consultation eventually contributed to the fall of the Somoza regime in July 1979. The Somoza clan had traditionally repressed an overwhelming majority of the population and employed systematic human rights violations to stay in power. These systematic violations under the Somoza regime continued to serve as a justification for the government of the Sandinista National Liberation Front (FSLN) due to the need to reestablish order in Nicaragua after the successful revolution of 1979. Between July 1979 and 1990, the Sandinistas governed Nicaragua without permitting any real democratic standards or political opposition.

160 Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, pp. 2, 191.

161 In addition, in February 1984 the Commissioners surprisingly found it more convenient to meet only twice that year because the IACHR “had to handle less work”. This is astonishing because the Central American conflicts were still provoking numerous human rights violations, although those were not as bad as the countless abuses in the early 1980s. Letter Edmundo Vargas Carreño to Luis Adolfo Siles, Washington, D.C., February 7, 1984 (IACHR files).

However, the US economic and diplomatic pressure on the Sandinista government combined with its massive support for the right-wing Contra rebels and CIA operations contributed as well to a deterioration of the Nicaraguan human rights situation. Furthermore, the United States frequently accused the Sandinistas of serious human rights abuses and often tended to replace the Sandinistas categorically rather than to 'democratize' them.¹⁶² In the struggle for human rights in Nicaragua, the violations committed by the Contras also influenced the human rights debate because it led to a comparison between violent acts attributed to the government and the armed opposition.¹⁶³

In general, the Sandinista government continued to cooperate with the IACHR since its first invitation to the Commission to carry out an on-site investigation shortly after the revolutionary victory. However, the relationship worsened when the human rights situation in Nicaragua became increasingly impaired – mainly as a by-product of the growing US pressure.¹⁶⁴ Initially, the Commission showed some sympathy and good will with the Sandinista government, which resulted in a sympathetic view of violations committed during the first months after the revolutionary victory.¹⁶⁵ With regard to the first Commission visit to Nicaragua under Sandinista rule, Farer states that it looked as if the Sandinistas were going to make a serious effort to protect human rights violations. He further sympathized with the difficult circumstances the Sandinistas faced.¹⁶⁶ In accordance, some Commissioners showed a certain understanding for the new government – this most likely had to do with the IACHR's strong report of 1978 and its impact on Somoza's resignation. In this sense, another former Commis-

162 See Jonas, p. 100.

163 See: Noam Chomsky – *Turning the Tide. U.S. Intervention in Central America and the Struggle for Peace*, Boston 1985, pp. 9-14. Chomsky describes very vividly atrocities committed by the Contras.

164 For instance, between 1984-1986, the Commission deplored the government's lack of cooperation. See: Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, p. 178.

165 Furthermore, in October 1979 even the mother organization benevolently resolved that Nicaragua could take some time to pay its debts and quotas to the OAS. AG/RES. 440 (IX-0/79), in: OEA/Ser.P/IX.0.2, 2 July 1980, Volume I, Ninth Regular Session, La Paz/Bolivia, October 22-31, 1979, Proceedings, Volume I, pp. 75/76.

166 Interview with Dean Tom J. Farer, Denver/Colorado, August 30, 1999.

sioner holds that there was empathy on part of some Commission members and among staff lawyers.¹⁶⁷ Nevertheless, also in the initial years, the Commission critically reported on detentions and trials of former Somocistas without due process¹⁶⁸ and the state of emergency, arbitrary arrests, *incommunicado* detentions and the inappropriate treatment of the Miskito Indians from the Atlantic Coast.¹⁶⁹ In general, the abuses against the indigenous population of Miskito origin as well as the controversial 'Anti-Somoza People's Courts', which exclusively sought to try members of Somoza's National Guard for crimes committed during the dictatorship, became the main topics on the IACHR agenda.

Later on, the Commission's position toward the Sandinistas shifted to a more critical approach. Understandably, this provoked uneasiness on the part of the Sandinista government, which eventually blamed the Commission for carrying out US strategies to weaken Nicaragua politically. It is not clear whether or not this change was originated in a modified view by the IACHR itself or introduced by the pressure of the Reagan administration on the Commission. Clearly, the human rights situation worsened also as a consequence of the US pressure by military and intelligence operations carried out against the Nicaraguan government. Accordingly, in 1988 Commissioner Farer wrote:

Twice in the years following Somoza's fall I visited the country as a member of the Human Rights Commission of the OAS. A mere 18 months into the Sandinista era sharp deviations from the democratic model were already apparent. (...) The situation of human rights deteriorated seriously since my last visit in 1983. I and others opposed military pressure in part because we believed (...) that such deterioration was a likely consequence.¹⁷⁰

Farer stressed the impairment of the human rights situation but highlighted the presence of military pressure that contributed to the worsening of the situation as well. Furthermore, he considered a compari-

167 Interviews.

168 Annual Report of the Inter-American Commission on Human Rights 1980-1981, OEA/Ser.L/V/II.54 doc. 9 rev. 1, 16 October 1981, Original: Spanish, p. 118.

169 Annual Report of the Inter-American Commission on Human Rights 1982-1983, OEA/Ser.L/V/II.61 Doc. 22 rev. 1, 27 September 1983, Original: Spanish, p. 15.

170 Van den Haag/Farer, pp. 68/69.

son between Somoza's regime and the human rights situation under the Sandinistas as unreasonable: "The only meaningful comparison is between Somoza and the Sandinistas *under stress*."¹⁷¹

In 1984, however, Bruce McColm, journalist and human rights activist at conservative Freedom House, New York, was presented by the Reagan administration and subsequently succeeded the liberal US Commissioner Farer. McColm focused on Nicaragua and fiercely condemned the Sandinistas' human rights practice. In the same year that McColm became a member of the Commission, a US lawyer of the IACHR staff was accused for having stolen and destroyed files on the Nicaraguan cases. It was ultimately decided that the denunciation was unfounded.¹⁷² Nevertheless, the mere fact that this type of accusation arose demonstrates that the issue of human rights in Nicaragua was a particularly sensitive one.

Although McColm repeatedly proposed a mediator role for the IACHR in the Central American conflict,¹⁷³ he also became part of a polemical dispute on human rights in Nicaragua. In any case, Bruce McColm provoked both left-wing liberals in the US and Nicaraguan diplomats with his publications on the Central American conflicts as Tom Farer had done with representatives of right-wing regimes. Particularly Nicaragua's Foreign Minister Miguel d'Escoto Brockmann and Carlos Tunnermann, the OAS Permanent Representative, were among McColm's most passionate antagonists.¹⁷⁴ D'Escoto Brockmann wanted McColm to be excluded from reporting on Nicaragua because he was allegedly biased as shown by his articles on the issue.

171 Ibid., p. 114, emphasis in the original. Another reference to former Commissioner Farer supplies a revealing hypothesis: He stated that a consolidated Sandinista regime with regular diplomatic and trade relations to the US would be more likely to establish a just society with human rights guarantees than the current governments in El Salvador, Honduras or Guatemala. Ibid., pp. 116/117.

172 IACHR files.

173 Letter from Bruce McColm, to Edmundo Vargas Carreño, New York City, October 10, 1984, (IACHR files). "A renewed, even if critical, commitment to a comprehensive regional settlement to be enforced by the O.A.S. would give the Administration the diplomatic lead once again and allow for a hemispheric consensus to form." R. Bruce McColm – Democracy and peace in Central America, in: Freedom at Issue No. 90, Freedom House, May-June 1986, pp. 10/11.

174 Carlos Tunnermann was finally expelled from the United States in July 1988 as a reaction to the expulsion of US diplomats from Nicaragua. Washington Post, July 15, 1988, A8; November 15, 1988, p. A22.

Further, the Nicaraguan Foreign Minister blamed the US member for implementing Reagan's policy, which led him to conclude that McColm did not have the moral quality nor the requested impartiality and independence to serve as a Commissioner.¹⁷⁵ Indeed, the articles authored by McColm had a Reaganish tone, sometimes even using Kirkpatrick's vocabulary and were highly critical of the government in Managua. In one instance, he proposed to take military actions against the Sandinistas including "...special operations, air strikes, blockades or a last resort, invasion..." Accordingly, Nicaragua's Vice Foreign Minister Victor Hugo Tinoco accused McColm of violating articles 19 (nonintervention) and 21 (no use of force, only in case of defense) of the OAS Charter.¹⁷⁶ Likewise, Ambassador Tunnermann criticized the OAS Permanent Representative of the US, Richard T. McCormack¹⁷⁷, for blaming Nicaragua for its criticism on McColm and argued that the United States should first ratify the American Convention before teaching human rights lessons to Nicaragua, which was already party to the Convention.¹⁷⁸ Eventually, IACHR chairwoman Russomano informed Foreign Minister d'Escoto about McColm's decision to abstain from voting in general and individual cases that concerned Nicaragua.¹⁷⁹

As the Sandinista government was clearly unhappy with the Commission's criticism on its human rights record, in all likelihood it

175 Letter from Miguel d'Escoto Brockmann, Foreign Minister, to Luis Adolfo Siles Salinas, Chairman of the IACHR, Managua, January 24, 1987. Letter from Miguel d'Escoto Brockmann, to João Clemente Baena Soares, Secretary General of the OAS, Managua, January 24, 1987 (IACHR files).

176 Letter from Carlos Tunnermann, Permanent Representative, to Gilda Russomano, Chairwoman of the IACHR, Washington, D.C., May 11, 1987 (IACHR files). Tunnermann forwarded his Vice Foreign Minister's letter to the IACHR. McColm's article in "Freedom at issue" was attached.

177 In July 1986, a harsh letter sent by US representative Richard T. McCormack to the Nicaraguan diplomat Parrales Castillo, somewhat spoilt the Nicaraguan delegation's public unveiling of a marble bust of General Sandino, the Sandinistas' idol. McCormack stated that the Marxist Sandinistas would cloak its cruel deeds with the name of a nationalist who actually rejected Communism. The incident was covered in several newspaper reports. See Washington Post, July 3, 1986, pp. C1, C2.

178 Letter from Carlos Tunnermann, to Richard T. McCormack, Washington, D.C., June 30, 1987 (IACHR files).

179 Letter from Gilda Russomano, IACHR Chairwoman, to Miguel d'Escoto Brockmann, Foreign Minister, Washington, D.C., July 1, 1987 (IACHR files).

wanted to portray the Commission as biased by singling out McColm.¹⁸⁰

The Inter-American Commission on Human Rights conducted its first on-site visit in Nicaragua under Sandinista rule between October 6 and 11, 1980. Quickly after assuming power, the 'Government of National Reconstruction' invited the Commission to investigate the human rights situation in Nicaragua. Six Commission members participated in the observation in loco – chairman Tom J. Farer, Marco Gerardo Monroy Cabra, Francisco Bertrand Galindo, Carlos Dunshee de Abranches, Luis Demetrio Tinoco Castro and César Sepúlveda.¹⁸¹ Recalling the fact that the number of Commissioners somehow reflects the importance attributed to an on-site observation, particularly if a small country is concerned, the Nicaraguan visit was clearly a significant one. However, it is possible that the Commission also wanted to enjoy its popularity in Nicaragua as a result of its transcendental report in 1978. On the other hand, the Sandinistas were eager to demonstrate their disposition to cooperate with the IACHR and to discharge upcoming allegations against abuses committed in the aftermath of the victorious revolution. The report based on the on-site investigation in 1980 was quite comprehensive in its tone.¹⁸² Though the document expressed the occurrence of several violations, it also maintained a sympathetic view of the circumstances in the ensuing period after the revolutionary change in 1979.

This perspective is both surprising and reminiscent of circumstantial relativism. First, the Sandinistas argued similarly in regard to dictatorships of the southern cone, hinting at extraordinary circumstances that would inevitably provoke individual abuses but not constitute a systematic policy. While this is certainly an appeasing opinion, the Commission as an unbiased human rights body must have judged the

180 For instance, in 1987, the OAS Mission of Nicaragua requested 50 copies of each Annual Report for 1983-84, 1984-85, 1985-86, the Special Report on the Miskito Indians as well as the Special Reports on Guatemala for 1983 and 1985. Seemingly, the Nicaraguan government sought for evidence to blame the Commission's lack of impartiality and probably to link it to McColm. Letter from Orlando J. Moncada, Encargado de Negocios, Misión Permanente de Nicaragua, to Edmundo Vargas Carreño, Washington, D.C., September 1, 1987 (IACHR files).

181 IACHR – Annual Report of the IACHR 1980-1981, OEA/Ser.L/V/II.54, doc. 9 rev. 1., 16 October 1981, Original: Spanish, pp. 5, 6.

182 IACHR – Report on the situation of human rights in the Republic of Nicaragua, OEA/Ser.L/V/II.53 doc. 25, 30 June 1981, Original: Spanish.

situation in Nicaragua as it did with repressive right-wing dictatorships. On the other hand, the Commission partly fulfilled the Sandinistas' expectation to downgrade the committed abuses as mainly 'individual excesses' – a notion that had already been in use by the cruel rightist dictatorships of the 1970s. In the case of the latter, the Commission correctly repudiated such arguments. With the Sandinistas, the IACHR's practice was different, at least initially. Actually, the circumstances in post-revolutionary Nicaragua were not comparable to those on the eve of South American dictatorships, yet this still meant a highly political statement.

At the 1981 General Assembly in Saint Lucia, chairman Farer presented the Report on the situation of human rights in Nicaragua to the First Commission and expressed his gratefulness over the cooperation the government provided in Managua.¹⁸³ With respect to the Commission's criticism on deficits concerning political rights, the Nicaraguan Representative, Leonte Herdocia, showed his disappointment that his government had ratified the American Convention on Human Rights and invited the Commission and asked what the IACHR expected after decades of dictatorship. It was foreseeable that Herdocia mentioned the 1978 IACHR Report on Nicaragua as a justification and emphasized that the majority of cases included in the 1981 Report, particularly those concerning the right to life, took place during July 1979. Furthermore, the Nicaraguan diplomat appreciated the mentioning of economic, social and cultural rights in the IACHR document. IACHR president Farer responded that the Report on Nicaragua was appropriate and that there existed a lack of political rights in that country.¹⁸⁴ At the General Assembly plenary session, the Nicaraguan Foreign Minister, Miguel D'Escoto Brockmann, accused the United States of being an "extra regional nation", which nevertheless belonged to "our organization." Further, D'Escoto provided a historical

183 On the other hand, Farer criticized the governments of Bolivia and Guatemala for their lack of collaboration. OEA/Ser.P/XI.0.2, 4 diciembre 1984, Volumen II, Parte II, Undécimo Período Ordinario de Sesiones; Castries, Santa Lucía, Del 2 al 11 de diciembre 1981; Actas y Documentos, Vol. II, 2a parte, Primera Comisión, pp. 36/37; pp. 48.

184 OEA/Ser.P/XI.0.2, 4 diciembre 1984, Volumen II, Parte II, Undécimo Período Ordinario de Sesiones; Castries, Santa Lucía, Del 2 al 11 de diciembre 1981; Actas y Documentos, Vol. II, 2a parte, Primera Comisión, pp. 74-77, 85, 87/88.

survey of US imperialism in Latin America and blamed the interventionism traditionally carried out by the United States.¹⁸⁵

When Nicaragua became member of the UN Security Council in 1982, despite US opposition, the US decided to turn to the OAS with its anti-Sandinista battle.¹⁸⁶ Again in the subsequent years, the Reagan administration attempted to bring the case of Nicaragua to the OAS but in general, these efforts failed because Latin American countries opposed the US administration's fundamental antagonism against the Sandinistas. As in other cases, these events revealed a type of indiscriminate solidarity among Latin Americans directed against a perceived US hegemony. At the First Committee session of the General Assembly in 1982, the Nicaraguan delegate Leonte Herdocia reiterated his government's cooperation with the IACHR and mentioned the "bloody atrocities" committed under the Somoza regime as a sort of justification for the Sandinistas' struggle. Ultimately, Herdocia disagreed with the Commission's conclusions but nevertheless reiterated his respect and affection for the IACHR and its members.¹⁸⁷

During the General Assembly in 1982, the delegations of Mexico, Venezuela, Costa Rica, Colombia and Trinidad and Tobago criticized the resolution concerning the IACHR reports as too weak because it did not mention any Member State by name.¹⁸⁸ The representative of the Caribbean country, Victor Chrysostom McIntyre, went further when he commented: "It makes the OAS something like a big laundry where soiled articles come in and after some manipulation, after we launder them, they come out clean" and further: "Sometimes, I feel that the OAS is a big great mold." For McIntyre, the 1982 resolution was a "great big whitewash". Exceptionally, McIntyre also emphasized women's rights in this context – an incident that is worth men-

185 OEA/Ser.P/XI.0.2, 4 diciembre 1984, Vol. II, Parte I; Undécimo Período Ordinario de Sesiones, Castries, Santa Lucía, del 2 al 11 de diciembre de 1981, Actas y Documentos, Vol. II, Primera Parte, Actas textuales de las sesiones plenarias y de la Comisión General, pp. 107.

186 Judy Butler – U.S.-Nicaraguan Relations since 1979, in: Peter Rosset/John Vandermeer (Eds.) – Nicaragua: Unfinished Revolution. The New Nicaragua Reader, New York 1986, p. 217.

187 OEA/Ser.P/XII.0.2, 29 julio 1983, Volumen II, Parte II; Duodécimo Período Ordinario de Sesiones, Washington, D.C., Del 15 al 21 de noviembre de 1982, Actas y Documentos, Volumen II, Segunda Parte, Actas de las Comisiones (Primera Comisión), pp. 58-68.

188 Ibid., pp. 125, 127, 128, 129.

tioning.¹⁸⁹ As a reaction to the weak resolution, the Panamanian representative, Juan Manuel Castulovich, proposed not to approve any resolution on the IACHR reports instead of accepting the watered-down procedure.¹⁹⁰ At the Plenary Session of the 1982 General Assembly, the Ecuadorian and Jamaican representatives too deplored the increasing weakness of human rights resolutions approved by the OAS.¹⁹¹

These criticisms once again clarify the highly complicated situation for human rights in the OAS in the early 1980s. The countries that wished to emphasize basic rights in resolutions and naming violators explicitly had become the minority. In addition, as previously mentioned, the dominating priority of the US to underline the struggle against (leftist) terrorism or 'totalitarianism' did not allow open accusations of right-wing regimes with questionable human rights records because those were protected as 'friendly governments'.

Verbal battles between Nicaraguan and US diplomats took place at the OAS General Assemblies during the 1980s. The Nicaraguan envoys continuously blamed the US for its interventionism and since 1984, repeatedly referred to the sentence of the International Court of Justice.¹⁹² In contrast, the delegation of the United States steadily stressed the Sandinistas' commitment to the OAS of July 1979 to hold elections and further stressed human rights violations against the Miskito Indians and the political opposition in general.¹⁹³

189 Ibid., pp. 129-132.

190 Ibid., p. 140.

191 OEA/Ser.P/XII.0.2, 29 julio 1983, Volumen II, Parte 1, Actas Textuales de las Sesiones Plenarias y de la Comisión General, pp. 242, 255.

192 In 1984, the International Court of Justice had condemned the US action against Nicaragua of the threat of the use of force, the violation of the nonintervention principle and the respect for sovereignty. Consequently, the sentence served the Sandinistas as an international reliable source to denounce the US policy toward their country.

193 In August 1983, several opposition organizations called upon the Contadora Group and other sectors who sought for a negotiated settlement in Central America to "...channel all their efforts through the Organization of American States..." The document issued by five major anti-Sandinista groups concluded that the Sandinistas betrayed the good will of the OAS Member States and finally stated that the organization "...has negligently failed to take responsibility they vested upon themselves on June 23, 1979..." when the Sandinistas promised to hold elections. Declaration on Central America. Comments, Analysis and Exhortations About a Political Solution to the Central American Crisis, issued by ARDE

In May 1982, the Commission carried out another on-site investigation that addressed the situation of the Miskito Indians on the Nicaraguan Atlantic coast.¹⁹⁴ The Nicaraguan government invited the IACHR to help achieve a friendly settlement.¹⁹⁵ Historically, the mainly English-speaking and protestant Miskito population differs culturally from the Spanish-speaking, mostly Catholic Nicaraguans, and have long sought to gain independence from the State of Nicaragua. The Sandinistas, however, wanted the Miskitos to accept their model of society. This provoked opposition among the Miskito population and ultimately led to the emergence of an Indian resistance that attacked the Sandinista armed forces beginning in 1981. In turn, the Sandinista government reacted harshly by searching for Miskitos across the Northeast of Nicaragua and then deporting an estimated number of 8,500. Miskito villages were burnt down, harvests were destroyed and hundreds of animals shot. In addition, thousands of deportations, forced recruitment and torture against the Miskito Indians were reported.¹⁹⁶

The title of the IACHR document based on this inquiry caused some discussion among the Commissioners. The Commission agreed on the following somewhat peculiar but apparently neutral title: "Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin".¹⁹⁷ The Commission report, which was

(Revolutionary Democratic Alliance), FDN (Nicaraguan Democratic Forces), MISURA (Miskitos, Sumos and Ramas), UTRANE (Nicaraguan Workers Union in Exile), and CID (Cuba Independent and Democratic in Solidarity with the People of Nicaragua, Washington, D.C., August 15, 1983, p. 5.

194 The special commission that effected the on-site observation was composed by Chairman Tom Farer, César Sepúlveda, Luis Demetrio Tinoco Castro and the staff lawyers Christina Cerna, Carlos Goldie and Manuel Velasco Clark.

195 See: César Sepúlveda – El procedimiento de solución amistosa ante la Comisión Interamericana de Derechos Humanos, in: *Human Rights in the Americas, Homage to Carlos Dunshee de Abranches*, pp. 242-252; Juan Méndez – La participación de la Comisión Interamericana de Derechos Humanos en los conflictos entre los Miskitos y el Gobierno de Nicaragua, in: *ibid.*, pp. 306-318.

196 See: Meier, p. 370.

197 IACHR – Report of on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin and Resolution on the Friendly Settlement Procedure Regarding the Human Rights Situation of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.66 doc. 10 rev. 3, 29 November 1983, Original: Spanish; and OEA/Ser.L/V/II.62 doc. 26, May 16, 1984, Original: Spanish, p. 1.

the first IACHR document translated to an Indian language (Miskito), concluded that the claims brought up by Indian organizations, mainly by the opposition group Misurasata, could only be supported by international law in one aspect: the right to preserve their culture, the practice of their religion and the use of their own language. In contrast, the IACHR found that the right to self-determination of political autonomy was not applicable. The report also denounced killings of Nicaraguan soldiers committed by 'opposition forces' crossing the Honduran border, i.e. the Contras. However, "[i]n turn, forces of the Nicaraguan Sandinista Army killed Miskitos during these border confrontations, and the Commission has sufficient information to hold that the Government of Nicaragua illegally killed a considerable number of Miskitos in Leimus..." Further, the IACHR Special Report promulgated on arbitrary detentions, relocation and resettlement of the Miskito Indians. Finally, the Commission put the situation of the Miskitos in the regional context by expressing hope with regard to the Contadora peace negotiations. The Inter-American Commission on Human Rights concluded its report by recommending an amnesty for all accused Indian Nicaraguans and proposed to hold a conference with representatives of the government and the Miskitos under the supervision of the Commission itself and other international organizations.¹⁹⁸ In a related resolution, the IACHR resolved to accomplish a friendly settlement of the conflict, which had not been reached, "...in part, due to circumstances beyond the control of the Nicaraguan government" and expressed its gratitude for the government's cooperation and the compliance with some of its recommendations.¹⁹⁹ In effect, the Commission did not coincide with Reagan's or even the Contras' wishes to categorically condemn the Sandinistas. On the contrary, the report even expressed a certain understanding for the complicated situation. Nevertheless, the Nicaraguan government denounced the report by criticizing the Commission's view of the situation as a mere internal conflict and blamed it for partiality in the applied methodology since more attention was paid to the reports presented by the government's

198 Ibid., pp. 129-132.

199 Resolution on the Friendly Settlement Procedure Regarding the Human Rights Situation of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62 doc. 26, May 16, 1984, Original: Spanish, p. 141.

opponents.²⁰⁰ Likewise, the Commission also received allegations from groups and individuals outside Central America that blamed Misurasata leader Fagoth for threatening dissident Miskito Indians and the Contras for atrocities against the Miskitos.²⁰¹ These examples illuminate the politization of the human rights issue in the Miskito case – either side wanted to profit from the situation but the IACHR seemed to be aware of this risk. Interestingly enough, the Commission was more informed on the situation than the UN Human Rights Commission because of the large amount of material available.

At the session of the First Committee of the 14th General Assembly in 1984, IACHR chairman César Sepúlveda presented the report on the human rights situation concerning the Miskito Indians in Nicaragua. Above all, Sepúlveda emphasized the Commission's mediating role between the indigenous population and the Nicaraguan government, while emphasizing the occurrence of rapes of women in Nicaragua during this time.²⁰² The Nicaraguan delegate, Orlando Guerrero described the three visits paid by the IACHR to his country as a proof of the government's cooperation. Further, Guerrero rejected the accusations of the report and mentioned sectors interested in denouncing Nicaragua before the IACHR. Finally, the Nicaraguan representative referred to victims of opposite forces who had testified before US Congress. As a reaction, US representative Fleischer criticized Guerrero's speech for its attacks on the US government. Moreover, Fleischer stated that Nicaragua was "under Cuban-Soviet-Marxist domination" and strongly accused the elections held as a fraud. Fleischer also reiterated his administration's desire that the Sandinistas comply with its commitment of 1979.²⁰³ In the tense atmos-

200 "Año de la Unidad Frente a la Agresión", Observaciones y Comentarios del Gobierno de Nicaragua al Informe de la C.I.D.H. titulado "Informe Especial sobre la situación de los derechos humanos de los Indios Miskitos en Nicaragua", Managua, August 1982 (IACHR files), pp. 2-4.

201 IACHR files.

202 OEA/Ser.P/XIV.0.2., 17 Septiembre 1985, Volumen II, Parte II; Décimocuarto Período de Sesiones, Brasilia, Brasil, del 12 al 17 de noviembre de 1984, Actas y Documentos, Volumen II, Segunda Parte, Primera Comisión, p. 145.

203 As seen above, the reference to the 1979 declaration was routinely repeated. See Washington Post, July 17, 1984, p. A18; Washington Post, November 13, 1987, p. A23. In August 1985, former member of the first Revolutionary Junta and later president Violeta Barrios de Chamorro turned to Secretary General Baena Soares, urging the OAS to demand from the Sandinista government the fulfillment of the

phere that evolved between the US and the Nicaraguan delegates, the latter remarked not to speak about the thousands of persons who suffered from US State terrorism.²⁰⁴

Conversely, US delegate Fleischer described the IACHR as “...truly the conscience of the Hemisphere” and highlighted the Commission’s findings on Nicaragua. Moreover, the US representative criticized the leaving out of the Cuban human rights record.²⁰⁵ On the other hand, Nicaragua’s representative Guerrero emphasized his government’s recognized improvements in the area of economic, social and cultural rights.²⁰⁶ Then – in regard to the recently revealed CIA torture handbook – Guerrero blamed the US policy toward Nicaragua as ‘genocide’. The reply from Fleischer was the following: “The Sandinista Front for National Liberation Government is using the United States as an excuse to repress its people.”²⁰⁷ Unlike the fierce disputes in the First Committee, the Plenary Session of the 1984 General Assembly did discuss neither the IACHR Report nor the Special Report on the situation of the Miskito population in Nicaragua.²⁰⁸ Apparently, this was also the case because of the aforementioned unspoken Latin American joint rejection of Reagan’s drastic anti-Sandinista policy. The Reagan administration also wanted the OAS to supervise the negotiation processes initiated by the Contadora Group. Nevertheless, as in foregoing years, the OAS Member States did not appreciate US efforts to use the Organization to implement Washington’s Central America policy. When in 1984 a US National Security Council docu-

promises made to it in 1979. Chamorro had signed the compromise letter to the OAS, issued in July 1979. Letter of Violeta de Chamorro included in: *Nicaragua Political Vision – International Bulletin of the Alianza Revolucionaria Democrática “Arde”*, August 1985.

204 OEA/Ser.P/XIV.0.2., 17 Septiembre 1985, Volumen II, Parte II; Décimocuarto Período de Sesiones, Brasília, Brasil, del 12 al 17 de noviembre de 1984, Actas y Documentos, Volumen II, Segunda Parte, Primera Comisión, pp. 122, 125, 127-136.

205 “I understand some of the reasons behind that, Mr. Chairman, but it seems to me strange that there should be no mention of the greatest human rights problem in the Hemisphere, namely the atrocious human rights record of the Government of Cuba.” OEA/Ser.P/XIV.0.2., 17 Septiembre 1985, Volumen II, Parte II, pp. 160-163.

206 OEA/Ser.P/XIV.0.2., 17 Septiembre 1985, Volumen II, Parte II, p. 164.

207 *Ibid.*, pp. 167, 171, 173.

208 See OEA/Ser.P/XIV.0.2, Vol. II, Parte I; Actas Textuales de las Sesiones Plenarias.

ment somehow became public, informing on the administration's interest to block Contadora, the unhappiness with the United States position grew among OAS States. Accordingly, Vandelaan concludes: "The OAS had essentially adopted Nicaragua's position."²⁰⁹

In the Annual Report for 1984-1985, the Commission again dealt with the situation of the Miskitos. In general, the IACHR concluded that several rights were restricted due to the emergency situation.²¹⁰ However, between the lines still a sort of sympathetic understanding was noticeable. Nevertheless, the Nicaraguan OAS diplomat Orlando Guerrero reminded the Commission of human rights violations committed by irregular armed groups – the Contras – and as expected further blamed the US for CIA actions, the mining of harbors and the discovered torture handbook. As always, a Nicaraguan's exposition provoked a US envoy to respond indignantly (and vice versa): as a countermove, US representative Fleischer accused the Sandinistas for human rights abuses.²¹¹

The 1985-1986 IACHR report appropriately described the admittedly complex situation of human rights in Nicaragua including the involvement of the right-wing Contras and the covert CIA activities. The IACHR came to the conclusion: "The situation sketched here generates a vicious circle which has a severe, adverse effect on the human rights situation."²¹² This deduction somewhat mirrored the prevailing attitude of the major faction within the Commission. Although it is an agreeable statement, an international and supposedly impartial human rights organ should have balanced more between a State's human rights performance and influencing circumstances in order not to appease violations or justify such abuses by external fac-

209 Mary B. Vanderlaan – *Revolution and Foreign Policy in Nicaragua*, Boulder/Colorado 1986, pp. 248, 326, 327.

210 Annual Report of the Inter-American Commission on Human Rights 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985. Original: Spanish, pp. 161-165.

211 OEA/Ser.P/XV.0.2, 22 octubre 1986, Volumen II, Parte II, Décimoquinto período ordinario de sesiones, Cartagena, Colombia, Del 5 al 9 de diciembre de 1985, Primera Comisión, pp. 49-52, 56. See also Washington Post, March 28, 1985, p. A20.

212 Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, pp. 168/169.

tors.²¹³ In other words, it is highly questionable whether the Commission was entitled to pronounce such political comments to explain the human rights situation in a Member State – in contrast, it did not mention any involvement of the US in the Salvadoran case. In fact, the Commission actually rejected the government's argument not to permit an on-site investigation due to the current US aggression.²¹⁴ The aforementioned Annual Report further referred to governmental measures against the Catholic Church, criticizing the deplorable conditions in Nicaraguan prisons as an "alarming situation". Accordingly, the Commission concluded that it was profoundly concerned over the "serious human rights situation" in Nicaragua.²¹⁵

While Nicaragua's OAS representative Rita Delia Casco explicitly referred to all the items of the Nicaragua section of the IACHR report at the 1986 General Assembly, she further mentioned the "bloody State terrorism" and the "cruel US war of aggression" against her country and stressed the International Court of Justice sentence against the United States. Nevertheless, she also used a statement contained in the 1981 Special Report, which disclaimed the existence of a policy of violation against the right to life against political enemies, including former National Guard members.²¹⁶ This clearly illustrates the risk of the Commission's initial sympathetic view of the Sandinista government: now, the authorities in Managua could use positive findings – how outdated they might be – to present themselves as guardians of human rights. The US envoy, Xenia Wilkinson, however, replied with a simple remark: "I do not believe that governments can be forced to commit human rights abuses against their own people."²¹⁷ Undoubtedly, this quote could find consent, but in regard with the actual US policies at that time and the human rights performance of the Contras, the displayed US decency remains an empty human rights rhetoric not far from hypocrisy. Further, Nicaragua's envoy Moncada additionally emphasized that the Annual Report itself and its presentation by the very chairman of the IACHR would prove the direct re-

213 Again, some patterns of the circumstantial relativism surface.

214 *Ibid.*, p. 178.

215 *Ibid.*, pp. 170, 174/175.

216 OEA/Ser.P/XVI.0.2, 27 julio 1987, Volumen II, Parte II, Décimosexto período ordinario de sesiones, Ciudad de Guatemala, Guatemala, Del 10 al 15 de noviembre de 1986, Primera Comisión, pp. 80, 85, 86.

217 *Ibid.*, p. 123.

sponsibility of the US.²¹⁸ Again, either side politicized the IACHR report.

The Permanent Representative of the United States, Richard McCormack, welcomed the democratic accomplishments in El Salvador and Guatemala and blamed the Marxist guerrillas for the human rights abuses. On the other hand, McCormack accused Cuba and Nicaragua on their human rights records. The US diplomat further used the IACHR reports to prove Nicaragua's bad human rights record by stressing "...a systematic pattern of gross human rights violations by the Nicaraguan Government."²¹⁹ Nicaragua's Orlando Moncada responded by holding the US guilty, stressing the World Court's sentence and the pending ratification of the American Convention on Human Rights.²²⁰

In sum, the US delegations always criticized Nicaragua's human rights violations and by contrast the Nicaraguan diplomats blamed a US "genocide" that made own abuses unavoidable.

Although Nicaragua's president, Daniel Ortega, headed his OAS delegation at the General Assembly in 1987 – an unprecedented event²²¹ – the same procedure of diplomatic US-Nicaraguan clashes took place at that meeting.²²² Again, the events of 1978/1979 in general and particularly the 1978 Special Report of the IACHR that fiercely condemned the Somoza regime, apparently served as a sort of

218 Ibid., p. 129.

219 Furthermore, McCormack found that the human rights violations of the Sandinistas led to the establishment of the democratic opposition. Ibid., pp. 147, 149-153.

220 Ibid., p. 154.

221 OEA/Ser.P/XVII.0.2, 14 noviembre 1987, Volumen II, Parte I, Décimoséptimo período ordinario de sesiones, Washington, D.C., Del 9 al 14 de noviembre de 1987, Sesiones Plenarias, p. 137. Ortega's presence in Washington surely was a provocation for the White House. Ortega praised the Esquipulas peace process and, as expected, accused the United States for its actions against Nicaragua. Ibid., pp. 138-151. The *Washington Post* explained his attendance with Nicaraguan concerns regarding a possible OAS condemnation. *Washington Post*, November 13, 1987, p. A23.

222 OEA/Ser.P/XVII.0.2, 14 noviembre 1987, Volumen II, Parte II, Décimoséptimo período ordinario de sesiones, Washington, D.C., Del 9 al 14 de noviembre de 1987, Primera Comisión, pp. 129-137, 152, 156-161, 164/165.

justification or even as a right to exist for the Sandinistas.²²³ The Commission's 1986-1987 Annual Report mostly dealt with the newly adopted Constitution and evaluated in detail its impact on the Nicaraguan human rights legislation, which contained rights of the first as well as of the second generation of human rights. Due to reports on summary executions by the Sandinista Popular Army and the suspension of the legal remedies of Amparo and Habeas Corpus during the renewed state of emergency, the Commission expressed its deep concern.²²⁴

In 1988, member Marco Tulio Bruni Celli, Executive Secretary Edmundo Vargas Carreño and staff lawyer Luis F. Jiménez visited Nicaragua. Though the sub commission found the state of emergency still in effect, the Anti-Somoza Courts were dissolved and the corresponding cases were being transferred to regular courts. Furthermore, the IACHR noted the effects of the Esquipulas peace process, which led to the release of prisoners, pardons and a conditioned amnesty. The latter, however, was linked to a cease-fire by the Contras. Likewise, Foreign Minister d'Escoto Brockmann reiterated that the state of emergency would end with the cease of the war against Nicaragua.²²⁵ Nevertheless, the Esquipulas peace agreement particularly showed an impact in Nicaragua, including the establishment of national reconciliation commissions. In short, the IACHR Annual Report for 1987/1988 stressed that the situation of human rights experienced some significant but precarious advances mostly due to agreements, which caused a reduction of the intensity of the armed conflict.²²⁶ In the subsequent year, the IACHR participated in the process that led to the partial release of persons serving prison sentences imposed by Special Justice Tribunals of the initial phase of the Sandinista rule. Further, members of the Sandinista Popular Army were sentenced to

223 OEA/Ser.P/XVII.0.2, 14 noviembre 1987, Volumen II, Parte II, Décimoséptimo período ordinario de sesiones, Washington, D.C., Del 9 al 14 de noviembre de 1987, Primera Comisión, pp. 132, 157-159.

224 Annual Report of the Inter-American Commission on Human Rights 1986-1987, OEA/Ser.L/V/II.71 Doc. 9 rev. 1, 22 September 1987, Original: Spanish, pp. 250-256 (new Constitution), p. 259.

225 Letter from Miguel d'Escoto Brockmann, Foreign Minister, to Gilda Russomano, Chairwoman, Managua, September 3, 1987 (IACHR files).

226 Annual Report of the Inter-American Commission on Human Rights 1987-1988, OEA/Ser.L/V/II.74 Doc. 10 rev. 1, 16 September 1988, Original: Spanish, pp. 311-316, 320, 321.

prison terms between five and thirty years because of human rights violations. Moreover, the IACHR report for 1988-1989 covered the electoral process in Nicaragua and finally hoped with regard to the right to life that "...the Government will continue investigating and punishing those responsible for the violations reported and will refine current law with a view to protecting the personal safety of detainees."²²⁷ In a separate chapter of the aforementioned document, the IACHR reported on its activities concerning the release of prisoners sentenced by Special Tribunals of Justice in accordance with the agreement of Sapoá between the Nicaraguan Resistance and the government. The Sapoá accord was reached on March 23, 1988 in the context of the Esquipulas process.²²⁸ At the 1989 General Assembly, representative Guerrero used the debate on the Additional Protocol to the American Convention on the Abolition of the Death Penalty to indirectly accuse the US for not even having ratified the Convention and further for executing minors and mentally disabled persons.²²⁹ Furthermore, he criticized US president Bush's comment that if opposition candidate Chamorro won the elections, the US would suspend the trade embargo against Nicaragua, as interference in the Nicaraguan electoral process and an attitude that contrasted with international public law.²³⁰ What followed was the known exchange of blows between US and Nicaraguan diplomats, which further were carried on at the plenary session.²³¹

Contrasting to preceding IACHR documents, the Annual Report dealing with 1989/1990 merely dedicated three pages in the countries section to the situation in Nicaragua, which mirrored the changed atmosphere after the electoral victory of the conservative opposition

227 Annual Report of the Inter-American Commission on Human Rights 1988-1989, OEA/Ser.L/V/II.76 Doc. 10, 18 September 1989, Original: Spanish, pp. 193-195, 205.

228 Ibid., p. 218.

229 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, p. 11.

230 Ibid., p. 151.

231 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, pp. 192-197.

coalition UNO. Nevertheless, the report also mentioned irregularities during the electoral campaign.²³²

At the General Assembly of the OAS in June 1990, the hemispheric situation had notably changed: while the Nicaraguan elections were a major step to ease up tensions between the United States and Latin American countries, the military governments in Chile and Paraguay had opened the way for a democratic transition.

Finally, the 1990-1991 Report dealt with the human rights situation in Nicaragua since the new government led by Violeta Chamorro took office and saw “some positive” and “significant” developments, though there were still “outbreaks of violence”. This optimistic view was further clouded by persisting democratic deficits, especially concerning the security forces. The latter hampered the new executive because they acted on behalf of one political party. Although not explicitly mentioned, the IACHR obviously referred to the FSLN.²³³ The following 1991 Report brought up similar concerns.²³⁴

In summary, the IACHR accompanied the US-Nicaraguan conflict but could neither decisively contribute to an arbitration nor to improve the situation. Although it covered the Nicaraguan human rights situation adequately, the Commission was merely reduced to supervise and support the ongoing negotiation efforts. The IACHR’s critical stock-taking of US actions against Nicaragua put the human rights situation in that country in a different context. However, this explanation of the circumstances aggravating the human rights situation was of a highly political nature and included the risk of partly justifying abuses of the Sandinistas.

In contrast to the cases of Nicaragua and El Salvador, there have not been many available sources concerning the Commission’s handling of the human rights situation in Guatemala. In that country, the human rights situation was less determined by the new black-and-white coordinates imposed by Reagan’s Cold War prism as in El Sal-

232 Annual Report of the Inter-American Commission on Human Rights 1989-1990, OEA/Ser.L/V/II.77 rev. 1 Doc. 7, 17 May 1990, Original: Spanish, pp. 162/163.

233 Annual Report of the Inter-American Commission on Human Rights 1990-1991, OEA/Ser.L/V/II.79 rev. 1 Doc. 12, 22 February 1991, Original: Spanish, pp. 472, 479.

234 Annual Report of the Inter-American Commission on Human Rights 1991, OEA/Ser.L/V/II.81 rev. 1 Doc. 6, 14 February 1992, Original: Spanish, pp. 235-245.

vador and Nicaragua, but at large, it also seemed to be more complex. In general, the oligarchic hierarchy combined with a highly unequal distribution of wealth and land characterized Guatemalan society. In addition, this unfair allocation affected a disproportionate amount of the large indigenous population. Unlike in Nicaragua – save the exception of the Miskito Indians – and El Salvador, the problem of general discrimination and human rights violations against the indigenous population had a key role in Guatemala. Notwithstanding, the case of Guatemala will not be discussed as detailed as the Nicaraguan and Salvadoran situation. In the late seventies, general unrest ushered in violence. As Dunkerley distinctively remarks: “In a political culture such as Guatemala’s, the macabre task of disaggregating the death toll by party affiliation is often needed to help identify shifts in government policy.”²³⁵ The US-backed coup in 1954, which ousted president Arbenz, paved the way for 40 years of military regimes conserving old class privileges.²³⁶ The perpetual military rule convinced opposition reformists of the necessity to fight with arms against the uniformed leaders. The URNG (National Revolutionary Unity of Guatemala) constituted the main insurgent force, while the extent of material support from the USSR or Nicaragua still remains uncertain. Dunkerley further holds that the Guatemalan elite was eager to collaborate with the United States.²³⁷ In accordance, Guatemala’s authorities welcomed Reagan’s victory but relations were also affected by Congressional disdain for Guatemala’s military and Guatemalan resentments tracing back to the US role in president Arbenz’ overthrow in 1954. Between 1978 and 1986, the governments in Guatemala were visibly or de facto dominated by the armed forces. In August 1982, General Efraín

235 James Dunkerley – Guatemala since 1930, in: *The Cambridge History of Latin America*, Volume VII: Latin America since 1930: Mexico, Central America and the Caribbean, edited by Leslie Bethell, Cambridge/New York/Melbourne 1990, pp. 243, 244, 247.

236 In 1954, a military coup supported by the CIA overthrew elected president Jacobo Arbenz Guzman who was considered to be a Communist sympathizer. The US had opposed his government because it was perceived as hostile to US economic interests in Guatemala.

237 “However, both the political traditions of the ruling class and the experience of the military tended towards close collaboration with the United States, and there was little dissent from the view that the regime could not permit differences in appreciation of the region’s strategic position to prejudice both ideological affinity and the resolution of mounting economic difficulties.” Dunkerley, p. 248.

Ríos Montt overthrew the government of Fernando R. Lucas who had ruled the country between 1978 and 1982. General Ríos Montt himself was ousted in August 1983 by a military coup led by his Minister of Defense, General Oscar H. Mejía Vitores. Between 1986 and 1991, a democratically elected civilian government headed by the Christian Democrat Vinicio Cerezo Arévalo ruled Guatemala though Cerezo's five-year term witnessed several coup attempts. The IACHR carried out investigations *in loco* in 1982, 1985, 1988 and 1990.

It is remarkable that the conservative Commission member Francisco Bertrand Galindo served simultaneously as Salvadoran ambassador to his neighbor country Guatemala. This actually must have implied a certain lack of complete independence and impartiality – at least with regard to the Member State to which Bertrand Galindo was accredited.²³⁸ According to the IACHR files and interviews, there were at least serious suspicions that the Salvadoran member did not comply with the expected impartiality and confidentiality.²³⁹ It was reported that the Salvadoran ambassador tried to influence the result of the Commission's findings on Guatemala by attempting to encourage less critical reports on that country. However, there is no reliable evidence to confirm the allegations.²⁴⁰ Whether he deliberately aimed to portray Guatemala's human rights situation in a better light or not, such attempts were not especially successful: in the end, the Commission approved three highly critical reports on Guatemala between 1981 and 1985.

In January 1980, the Guatemalan government invited the IACHR to conduct an on-site observation in its territory. The significance of this invitation was minimal, however, when two communications by the Commission to set up a date for the visit went unanswered by the Guatemalan government. As a result, the IACHR assumed that "...the Government of Guatemala is not interested in having the Commission observe the human rights situation in situ."²⁴¹ Nevertheless, IACHR

238 Reportedly, Bertrand Galindo sought to influence the Commission's findings on Guatemala though he had to abstain from the decisions on that country. However, this allegation is hard to confirm.

239 Interviews.

240 Interviews.

241 IACHR – Report on the Situation of Human Rights in the Republic of Guatemala, OEA/Ser.L/V/II.53 doc. 21 rev.2, 13 October 1981, Original: Spanish, p. 6 (emphasis in the original).

chairman Sepúlveda also expressed concerns about the Commissioners' personal security in Guatemala.²⁴² The Commission regretted that it had to prepare the Special Report on Guatemala without the vital information it would have obtained during its stay in the country, but ultimately such a document was created.²⁴³ This report came to the conclusion that an "alarming climate of violence" persisted and political leaders of the opposition, trade unionists, priests, lawyers, journalists, professors, teachers and thousands of peasants and Indians were among the most affected victims. While the Commission stressed abuses like illegal executions and forced disappearances, the IACHR report also mentioned that socioeconomic disparities contributed to "generalized violence".²⁴⁴ Likewise, the 1980-1981 Annual Report of the IACHR informed that the right to life was one of the most affected in Guatemala.²⁴⁵ In the subsequent Annual Report, the human rights situation in Guatemala was not specifically mentioned – apparently because the 1983 Special Report was being prepared to address the issues, so the IACHR saw no need to mention Guatemala in its report.²⁴⁶

On May 29, 1982, the IACHR received another invitation to visit Guatemala, this time from the new military junta. This on-site investigation took place between September 21 and 26, 1982. Chairman Monroy Cabra, first vice chairman Sepúlveda, Dunshee de Abranches, Farer and Bertrand Galindo composed the special commission.²⁴⁷ The participation of the latter was notable since he had served as ambassador of El Salvador to the host country. The sub commission interviewed various representatives of the government and other sectors, visited detention centers and finally issued its preliminary findings. In

242 Letter from César Sepúlveda, IACHR Chairman, to Edmundo Vargas Carreño, Mexico City, February 14, 1980 (IACHR files).

243 IACHR – Report on Guatemala 1981, p. 6.

244 IACHR – Report on Guatemala 1981, p. 132. On economic, social and cultural rights see pp. 127-131.

245 Annual Report of the Inter-American Commission on Human Rights 1980-1981, OEA/Ser.L/V/II.54 doc. 9 rev. 1, 16 October 1981, Original: Spanish, p. 111.

246 See: Annual Report of the Inter-American Commission on Human Rights 1981-1982, OEA/Ser.L/V/II.57 Doc. 6 rev. 1, 20 September 1982, Original: Spanish.

247 IACHR – Report on the situation of human rights in the Republic of Guatemala, OEA/Ser.L/V/II.61 Doc. 47 rev. 1, October 5, 1983, Original: Spanish, pp. 8, 9. Further, Executive Secretary Edmundo Vargas Carreño, Assistant Executive Secretary David Padilla, and staff lawyers Manuel Velasco Clark and Santiago Chaves Escoto accompanied the Commissioners.

its conclusions, the IACHR report states that there was no knowledge about government investigations on human rights violations. Though the Commission acknowledged a slight improvement of the situation, it mentioned that human rights violations continued. Finally, the document recommended investigating and punishing violations, completing the review of trials by the Special Courts and ending the repression in rural areas immediately. The Commission urged to investigate and to punish human rights abuses against Indians and peasants, the main victims of massacres.²⁴⁸ Unlike the 1981 Special Report, this report did not include separate chapters on economic, social and cultural rights, though the previous document had identified the socio-economic disparities in Guatemala as the main source for violence and social unrest. The report also mentioned the coup in August 1983, which overthrew the government whose human rights practice was subject of the report.²⁴⁹ The Annual Report for 1982-1983 mentioned that the violence in Guatemala had decreased since General Ríos Montt took power in August 1982. Although his regime "...abolished the use of paramilitary groups in Guatemala City and other urban centers...", human rights violations remained in rural regions. The IACHR document of 1982/1983 also reported on violations committed by the guerrilla forces. Further, the fact that Ríos Montt's successor, his former Minister of Defense, General Mejía Vitores, abolished the Courts of Special Jurisdiction was seen as an improvement. Before, the Commission had considered these Courts as most significant violation of the right to a fair trial and due process.²⁵⁰

This leads to the question of whether or not an IACHR report on the human rights performance of an ousted government had the potential to indirectly support the new executive to justify a coup due to violent practices of the preceding regime. Certainly, this was the case in various occasions but it was an inherent risk the Commission had to take.

In May 1985, an IACHR sub commission composed of chairman Sepúlveda, members Aguilar, Monroy Cabra, McColm, Assistant Ex-

248 IACHR – Report on the situation of human rights in the Republic of Guatemala, OEA/Ser.L/V/II.61 Doc. 47 rev. 1, October 5, 1983, pp. 131-133.

249 Ibid.

250 Annual Report of the Inter-American Commission on Human Rights 1982-1983, OEA/Ser.L/V/II.61 Doc. 22 rev. 1, 27 September 1983, Original: Spanish, pp. 10/11, 17, 18.

ecutive Secretary David Padilla and staff lawyer Manuel Velasco Clark carried out another on-site investigation in Guatemala. A large part of the Special Report based on such observation *in loco* was dedicated to the topic of forced disappearances. Further, this Third Special Report mainly dealt with the typical Guatemalan issues of the so-called 'development polls', inter-institutional coordinators, civil self-defense patrols and its effects on the rural and indigenous population. As in foregoing publications, the IACHR recognized that the latter constituted the group that was the most affected by human rights violations in Guatemalan society. Accordingly, the Commission was worried about the reporting on the rural and indigenous population and their rights to life, personal integrity, security and personal liberty. However, the document also mentioned the role of the guerrilla for the human rights situation. The IACHR stressed that it could only evaluate the aforementioned governmental programs from a human rights perspective.²⁵¹ Likewise, the 1984-1985 Annual Report of the Inter-American Commission on Human Rights provided a detailed, well-informed and appropriate portrayal of the human rights situation in Guatemala. Surely, this was because it coincided with the Third Special Report based on the on-site visit. As the Special Report, the Annual Report also highlighted forced disappearances as the major human rights problem and criticized negative effects on basic rights of the governmental programs mentioned above.²⁵²

The subsequent Annual Report covering the period between 1985-1986 mainly dealt with the democratically elected government headed by Vinicio Cerezo Arévalo who assumed power on January 14, 1986. When Cerezo Arévalo took office, the National Constituent Assembly ended and the new Congress was established, and the new Constitution entered into force. Moreover, the Commission applauded the new executive when it withdrew Guatemala's reservation – referring to the application of the death penalty – made on ratifying the American Convention. In general, the Commission observed a notable improvement of the human rights situation once the new government began its

251 Tercer Informe sobre la situación de los derechos humanos en la República de Guatemala, OEA/Ser.L/V/II.66 Doc. 16, 3 octubre 1985, Original: español, pp. 5/6, 93, 103, 113.

252 Annual Report of the Inter-American Commission on Human Rights 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985. Original: Spanish, pp. 143-159.

work. Even though the new president did not anticipate trials of the military, he announced that he would support the Supreme Court if it decided to try armed forces members for human rights abuses. Notwithstanding, president Cerezo Arévalo's opinion was not to purge the military of all abusers, but to leave this problem behind. As a result, the new president was accused for not investigating human rights violations sufficiently. Nevertheless, in the judgment of the IACHR all human rights abuses and violent acts "dramatically decreased" including death squad activities, although forced disappearances did not stop. Finally the IACHR concluded that besides the realized advances, human rights problems still remained, particularly due to "widespread violence" outside the president's control.²⁵³ In 1986, the OAS General Assembly gathered in Guatemala City. With this symbolic meeting the organization supported the newly elected government.²⁵⁴

Nevertheless, the report dealing with the years 1986-1987 found that although the government had demonstrated its willingness to improve the human rights situation, serious restrictions regarding the observance of fundamental rights persisted. The Commission report recognized that the government of president Cerezo Arévalo ratified the American Convention to Prevent and Punish Torture and that Guatemala became the ninth country that accepted the jurisdiction of the Inter-American Court of Human Rights. The first human rights prosecutor was also sworn in. Notwithstanding, besides the good intentions shown and initial measures undertaken by Cerezo, "...a perceptible decline in the observance of human rights occurred immediately after the first months of his government." The Commission further criticized that no "serious effort" had been made to investigate the cases of forced disappearances while death squads returned to act. Moreover, the Commission received reports on illegal detentions and mistreatment of prisoners. In sum, despite of the initial improvement, the new government was reluctant to investigate disappearances and anew faced the old human rights problems.²⁵⁵

253 Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, pp. 156-161.

254 Washington Post, November 11, 1986, p. A24.

255 Annual Report of the Inter-American Commission on Human Rights 1986-1987, OEA/Ser.L/V/II.71 Doc. 9 rev. 1, 22 September 1987, Original: Spanish, pp. 228-234.

In accordance, in its next Annual Report the Commission announced to request another on-site observation due to the serious situation. Nevertheless, the Commission observed a “major progress” of the human rights situation in Guatemala although it expressly considered the violations of the right to life still as “alarmingly great”.²⁵⁶ Furthermore, the Commission expressed its gratification that Guatemala finally had a democratic government after a long period of military rule.²⁵⁷ Ironically, the aforementioned situation was threatened by two coup attempts in 1989. The OAS Permanent Council expressed its support to the democratic process in Guatemala with regard to the unsuccessful coup on May 9, 1989.²⁵⁸ Also due in part to the Esquipulas process, the repatriation of refugees began. The IACHR remained concerned with the notorious and controversial massacre of ‘El Agua-cate’, where 21 peasants were killed in 1988. In its 1988-1989 Annual Report, the Commission concluded that progress had been made regarding the observance of human rights, though forced disappearances continued. Further, the report stressed that “[n]otwithstanding the efforts undertaken by the civilian authorities, in order for human rights to be adequately protected in Guatemala the military and police must be subordinated to the judicial authorities...” and that violence could not be combated with violence.²⁵⁹

In its 1989-1990 Report, the Commission stated that it received fullest collaboration by the Guatemalan authorities. Further, the IACHR cheered substantial advancements concerning the consolidation and institutionalization of democracy, though it did mention a revived guerrilla activity. Nevertheless, the Commission concluded that during 1989-1990, “...the most serious increase in violence and human rights violations during the term of President Cerezo” had occurred.²⁶⁰ Accordingly, US Permanent Representative Luigi Einaudi told the

256 Annual Report of the Inter-American Commission on Human Rights 1987-1988, OEA/Ser.L/V/II.74 Doc. 10 rev. 1, 16 September 1988, Original: Spanish, pp. 301, 303.

257 Ibid., p. 310.

258 Annual Report of the Inter-American Commission on Human Rights 1988-1989, OEA/Ser.L/V/II.76 Doc. 10, 18 September 1989, Original: Spanish, p. 172.

259 Ibid., p. 181.

260 Annual Report of the Inter-American Commission on Human Rights 1989-1990, OEA/Ser.L/V/II.77 rev. 1 Doc. 7, 17 May 1990, Original: Spanish, pp. 149, 150, 161.

General Assembly that his delegation considered the situation in Guatemala to be “grave”.²⁶¹

In the subsequent report, the IACHR was even more pessimistic: serious human rights violations continued, reports on abused street children reached the Commission and attacks on local human rights activists took place. Furthermore, sources were mentioned, which hypothesized that Guatemala was on the way back to the dark past of the 1980s. The IACHR report discouragingly summed up the developments between 1986 and 1990:

During the first months of the presidency of Vinicio Cerezo there was a perceptible improvement in the human rights situation which ceased as it became clear that real power in Guatemala remained outside civilian control.²⁶²

At last, the IACHR came to the conclusion that the human rights situation in Guatemala had deteriorated and affirmed an “alarming climate of violence throughout the country.” In response to this problem, the Commission decided to prepare another Special Report on the situation in Guatemala.²⁶³ In the subsequent Annual Report, the Inter-American Commission on Human Rights again highlighted the connection between the critical socioeconomic conditions and the “very serious human rights situation” in Guatemala. In November 1990, Jorge Serrano Elías won the presidential elections in the second round. During the campaign 20 politicians and two journalists were murdered.²⁶⁴

Guatemala’s civil war had not officially ended before 1996 and a certain level of violence continued after the signing of the peace accords. During the period of this study, the Inter-American Commis-

261 OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, p. 190.

262 Annual Report of the Inter-American Commission on Human Rights 1990-1991, OEA/Ser.L/V/II.79 rev. 1 Doc. 12, 22 February 1991, Original: Spanish, pp. 444-449.

263 Ibid., pp. 452, 453. See OEA/Ser.P/XXI.0.2, 6 abril 1992, Volumen II, Parte II, Vigésimo primer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Primera Comisión, p. 104.

264 Annual Report of the Inter-American Commission on Human Rights 1991, OEA/Ser.L/V/II.81 rev. 1 Doc. 6, 14 February 1992, Original: Spanish, pp. 213, 204.

sion monitored the events in Guatemala and published three critical special reports between 1981 and 1985. Since 1986, the Commission demonstrated a more sympathetic view but it noted deficiencies in the human rights field as well.

Besides the organization's role as observers in the Central American conflicts, the Panamanian situation briefly became a main topic at the OAS. Ironically, the Panama crisis in 1989 also offered a unique opportunity for the organization: since US president George Bush wanted to demonstrate his administration's commitment to multilateralism, the OAS was perceived as well-suited to handle the problem as opposed to the US marines.²⁶⁵ General Manuel Noriega had dominated the government in Panama since 1987. His involvement in drug trafficking had seriously damaged US-Panamanian relations. Nevertheless, as Stoetzer points out, the 1989 crisis was not exclusively a question of drug trafficking problems but could be traced back further to the US inability to control the powerful Noriega.²⁶⁶

General Noriega's forced peace caved in as a result of civilian protests leading to a serious political crisis in mid-1987. He tried to oust his second-in-command, Roberto Díaz Herrera who had publicly denounced Noriega for serious crimes. A broad opposition movement emerged around Díaz, seeking Noriega's removal. The president violently repressed the protests. Conniff summarizes that the 1987 crisis exposed the "dictatorial nature of the regime" and resulted in a reproach against General Noriega by the US Senate. This ushered in an unusual situation for the US, as it had to cooperate with the Panamanian authorities regarding the canal but it simultaneously was beginning to promote the regime's removal from power in early 1988.²⁶⁷

265 A former US diplomat holds that Bush actually did not want to carry out an invasion. It was ultimately the mistreatment of US soldiers by the Panamanian military that decided the issue. See: Bob Woodward – *The Commanders*, New York 1991.

266 Stoetzer, pp. 173/174.

267 Michael Conniff – Panama since 1903, in: *The Cambridge History of Latin America*, Volume VII: Latin America since 1930: Mexico, Central America and the Caribbean, edited by Leslie Bethell, Cambridge/New York/Melbourne 1990, pp. 603-643, here: pp. 640-642. As early as in 1987, the US representative at the OAS, McCormack, showed concerns on the deterioration of human rights in Panama. OEA/Ser.P/XVII.0.2, 14 noviembre 1987, Volumen II, Parte II, Décimo-séptimo período ordinario de sesiones, Washington, D.C., Del 9 al 14 de noviem-

The US laid sanctions on the government but Noriega could politically survive a coup attempt. When US invasion plans became common knowledge and were the subject of discussion, Noriega could gain declared support by almost all Latin American governments that spoke out against a US military intervention.²⁶⁸ Conniff's comment is elucidating: "Even the most unsavoury and disgraced regime could extract political capital from defending national sovereignty." After George Bush's success at the US presidential elections in November 1988, Noriega hoped to have a friend in the White House since Bush had been CIA Director in the 1970s. Noriega had also been working for the CIA and had had some personal encounters with Bush. In spite of this, the Bush administration supported Noriega's challenger in the May 1989 elections logistically and financially. When a likely victory of the opposition candidate Guillermo Endara became clear, Noriega nullified the elections and thus provoked decided criticism from the OAS Member States, particularly from the United States.²⁶⁹ The year 1989 also witnessed a series of major changes in international politics: the Berlin Wall was torn away, the US faced problems with China including the massacre at the Tiananmen place which shocked the international community, and in El Salvador the November offensive of the FMLN as well as the assassination of the Jesuits captured attention (see chapter IV. 3.). In this context, US-Panamanian tensions were initially smoothed by the incoming Bush administration through the delegation of the conflict to the OAS. In September 1989, Noriega appointed a façade president who did not get recognition from the US. The Bush administration had now decided getting rid of Noriega was imperative and tried to convince him to resign, stirred up conspiracies and even promoted a coup by dissident officers, which failed in October 1989. After the coup did not remove Noriega's regime, the US focused on a military intervention to get rid of Noriega.²⁷⁰ The OAS Member States were still hesitant to give the United States any sort of authorization for intervention. Farer suggests that this behavior ironi-

bre de 1987, Primera Comisión, p. 154. In reaction to McCormack's statement, the Panamanian delegate replied. *Ibid.*, pp. 224/225.

268 See the interesting article by Adolfo Aguilar Zinser – In Latin America, 'Good' U.S. Intervention Is Still No Intervention, in: *The Washington Post*, August 5, 1987, p. A23a.

269 Conniff, p. 641.

270 *Ibid.*

cally deprived Latin American OAS Members of any influence on the invasion.²⁷¹ In this context, the stand of the OAS and the function of the Inter-American Commission on Human Rights are both interesting; more so because academic research has widely neglected the Commission's role.

The Inter-American Commission on Human Rights prepared a Special Report on the human rights situation in Panama based on an on-site observation that took place between February 27 and March 3, 1989. After this visit, another on-site investigation was planned by the IACHR. The Commission repeatedly attempted to persuade the Panamanian government to permit another visit. In April 1989, before the electoral fraud, Panama's Foreign Minister Jorge Eduardo Ritter, however, complained to Secretary General Baena Soares that the Commission had adopted the opposition's position, which identified with the US opinion. Further, Ritter blamed the IACHR for supporting the US "aggression" against Panama.²⁷²

The OAS itself sought to find a solution for the crisis once US invasion plans began to spread. In May 1989, shortly after the Panamanian electoral swindle, Venezuela's president Carlos Andrés Pérez solicited the OAS to call for Noriega's resignation before the OAS foreign ministers gathered. As in other occasions, Venezuela became the main speaker to articulate criticism on a government of another Member State that did not comply with democratic rules and human rights. Along with other OAS members, Pérez stressed that the organization should take a similar stand to that during the Nicaraguan crisis in 1979 – a comparison that received much attention.²⁷³ In the same month, an OAS Consultation Meeting of Foreign Ministers convoked by Venezuela considered the "outrageous abuses" against the opposition²⁷⁴ and

271 Tom J. Farer – Collectively Defending Democracy in the Western Hemisphere, in: Tom Farer (Ed.) – *Beyond Sovereignty, Collectively Defending Democracy in the Americas*, Baltimore/London 1996, p. 14.

272 Letter from Jorge Eduardo Ritter, Foreign Minister, to João Clemente Baena Soares, Panama City, April 10, 1989 (IACHR files).

273 Washington Post, May 13, 1989, p. A10; May 16, 1989, p. A16. See Robert A. Pastor – A Born-Again Strategy for Panama, in: Washington Post, May 14, 1989, p. C7. Washington Post, May 17, 1989, p. A22.

274 Twenty-First Meeting of Consultation of Ministers of Foreign Affairs, May 17, 1989, Washington, D.C., OEA/Ser.F/II.21 Doc. 8/89 rev. 2, 17 May 1989, Original: Spanish: The Serious Crisis in Panama in its International Context, Resolution I. See Washington Post, May 18, 1989, p. A1.

set up a mission consisting of three OAS foreign ministers to deal with the Panamanian crisis. The conference was overshadowed by the financial crisis that, strictly speaking, ushered in the organization's formal incapacity to pay for the meeting's costs.²⁷⁵ The president of the Meeting of Consultation requested that the IACHR undertake a new investigation of the Panamanian situation as soon as possible to complete and update its information on the human rights situation in that country.²⁷⁶ The OAS repeatedly extended the mandate of the mediator mission composed of the Foreign Ministers from Ecuador, Guatemala and Trinidad & Tobago. The impatient US government did not welcome this extension of the diplomatic mission's directive.²⁷⁷ The three-minister mission unsuccessfully sought to find a compromise within the strained relationship between traditional noninterventionism and hemispheric uneasiness about Noriega's conduct.²⁷⁸ The report from the three foreign ministers stated that the mission had repeatedly and frequently received denunciations concerning human rights violations committed by government agents. Furthermore, the mission's document accused the US of military maneuvers – pointing the finger at US officials and holding them responsible for the breakdown of the mission.²⁷⁹ In the end, the mission failed after three months and the OAS efforts to negotiate the situation ended without ousting General Noriega – the main goal of the Bush administration.²⁸⁰ This provoked impatience in Washington with the OAS and paved the way for unilateral US action.²⁸¹ The incapacity of the OAS

275 Washington Post, May 17, 1989, p. A31.

276 Vigésimoprimer Reunión de Consulta de Ministros de Relaciones Exteriores, 17 de mayo de 1989, Washington, D.C., OEA/Ser.F/II.21 Doc. 59/89, 24 agosto 1989, Original: español: Declaración del presidente de la XXI Reunión de Consulta de Ministros de Relaciones Exteriores.

277 Washington Post, June 6, 1989, p. A6; June 7, 1989, p. A14; July 20, 1989, p. A26.

278 Washington Post, July 21, 1989, p. A27.

279 Informe de la Misión designada por la Vigésimoprimer Reunión de Consulta de Ministros de Relaciones Exteriores, August 23, 1989, Vigésimoprimer Reunión de Consulta de Ministros de Relaciones Exteriores, 17 de mayo de 1989, Washington, D.C., OEA/Ser.F/II.21 Doc. 59/89, 24 agosto 1989, Original: español, p. 8. Washington Post, August 24, 1989, p. A27.

280 See NSD 17, U.S. Policy on Panama and General Manuel Noriega (Classified, no text available), Late August 1989, in: Simpson, pp. 894/895.

281 "Similarly, in keeping with its diplomatic style in Central America, the administration had little time for the efforts of other Latin American countries with an

to settle the conflict further seemed to justify the prevailing reluctance among US Congress members to pay the due \$40 million to the organization.²⁸²

Nevertheless, shortly after the inability of the foreign minister mission to mediate, the IACHR tried to convince the Panamanian authorities to permit another on-site investigation.²⁸³ On September 12, 1989, the Panamanian Vice Foreign Minister, Norberta Tejado Cano, invited the Commission to conduct an investigation *in loco* from November 1989 on – a step that was cheered by the IACHR, which proposed a visit between November 6 and 9, 1989.²⁸⁴ Unfortunately, the correspondence of the IACHR does not clarify the circumstances that finally thwarted the carrying out of an on-site observation.²⁸⁵ The IACHR even attempted to convince the Panamanian government to permit a visit after the November 1989 General Assembly, nine days before the US invasion occurred – without success.²⁸⁶ There is reason to believe that the IACHR actually wanted to prevent US military action against Panama, though this did not stem from any alleged sympathy for the Panamanian government. It is argued here that it was the reluctant Panamanian government that impeded a probably helpful investigation of the IACHR before December 1989. Regrettably, the IACHR could not act as a mediator as it had done in former occasions.

interest in the Panamanian situation and paid little attention to the possibility of multilateral negotiations or serious OAS involvement.” Thomas Carothers – *In the Name of Democracy. U.S. Policy Toward Latin America in the Reagan Years*, Berkeley/Los Angeles/Oxford 1991, p. 179.

282 Washington Post, August 24, 1989, p. A15.

283 Letter from David J. Padilla, to Jorge Eduardo Ritter, Foreign Minister of Panama, Washington, D.C., August 25, 1989; Letter from Edmundo Vargas Carreño, to José María Cabrera, Permanent Representative of Panama, Subject: On-site observation, Washington, D.C., September 8, 1989 (IACHR files).

284 Letter from Norberta Tejada Cano, Vice Foreign Minister of Panama, to Edmundo Vargas Carreño, Panama City, September 12, 1989. Cablegram from Edmundo Vargas Carreño, to Norberta Tejada Cano, Washington, D.C., September 22, 1989 (IACHR files).

285 However, on September 29, 1989, the IACHR sent the Special Report on Panama to the government, which might have caused a negative judgment of the Panamanian executive towards the Commission. Letter from Oliver Jackman, IACHR Chairman, to Jorge Eduardo Ritter, Foreign Minister of Panama, Washington, D.C., September 29, 1989 (IACHR files).

286 Letter from David Padilla, to José María Cabrera Jované, Permanent Representative of Panama, Washington, D.C., December 11, 1989 (IACHR files).

Its Special Report on Panama resulted in a predictable politicization particularly at the General Assembly of the OAS.

In its 1989 Special Report dealing with the human rights situation in Panama, the Commission mainly highlighted inhumane treatment, violence of the police and other abuses. In general, however, the conclusions were adequate and not as harsh as one might expect. However, the report called the government “devoid of constitutional legitimacy.”²⁸⁷

At the General Assembly in November 1989, the discussion on the Panamanian human rights situation and the IACHR Special Report on Panama monopolized the debates of the First Committee. IACHR chairman Jackman presented the Panama report before the Assembly. He explained that the Commission had sought to comply with the request of the Consultation Meeting to arrange an on-site visit with Panama before the General Assembly. Panama’s Permanent Representative, José M. Cabrera Jované, defended his government and the controversial elections in a detailed reply. Cabrera accused the Commission of interference in domestic juridical decisions and compared the situation in other countries. While in other countries in the hemisphere, death squads operated, in the “grave Panamanian crisis”, there were no disappeared citizens. Furthermore, the Panamanian ambassador called the IACHR document partial with regard to political rights and as “one of the instruments to condemn us.” In addition, Cabrera attempted to draw parallels with Nicaragua, which had been the “victim of an aggression” for ten years. For Panama, the IACHR wording of “US diplomatic and economic sanctions” was interpreted as a “brutal aggression on the part of North-American imperialism.”²⁸⁸ Furthermore, the Panamanian representative accused the US of providing financial support for the opposition during the electoral process and international observers for criticizing the May elections. In reference to the Commission’s finding that the annulment of the May elections ripped the Panamanian government of its constitutional legitimacy, Cabrera suggested that the IACHR served as an instrument to carry

287 See: Report on the Situation of Human Rights in Panama, OEA/Ser.L/V/II.76 Doc. 16 rev. 2, 9 November 1989, Original: Spanish.

288 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, pp. 204-206 (Jackman’s presentation), pp. 206-221 (Panama’s rebuttal).

out US foreign policy.²⁸⁹ Chairman Jackman later rejected this harsh reproach against the Commission's integrity.²⁹⁰ Also in reply, the US delegate, Maisto, rebuffed Panama's accusations regarding a politization of human rights by the OAS or the IACHR as an "insult" to the OAS and its Members and made clear that Noriega was the decisive figure in that country. For Maisto, the Commission report on Panama was suitable; he repeatedly referred to and even quoted the IACHR document during his speech.²⁹¹ This would seem to suggest that the US used the IACHR report for its ends – to accuse the Noriega government.²⁹² As a result, the Panamanians accused the US delegate of presenting the Commission report on Panama as an indictment against the government.²⁹³ In reply to the US diplomat, the Panamanian representative again scolded the United States for politicizing the human rights issue and called the Commission to act impartially in consideration of US endeavors.²⁹⁴ Subsequently, the delegations of Costa Rica, Venezuela, Barbados and Argentina explicitly supported the IACHR report dealing with Panama. Cabrera, the Panamanian ambassador, replied that he wished to establish democracy but that the US was impeding this process. The Panamanian delegation also received assistance from the Nicaraguan representative, Guerrero, who questioned why Panama was singled out while worse human rights abusing governments were never mentioned.²⁹⁵

At the plenary session, the controversies and battle of words between the US and Panamanian delegations continued. A discussion evolved on whether to include a separate resolution on the Panama report. Finally, the proposal was approved with 25 votes in favor to one

289 Ibid., pp. 217, 221. Nevertheless, the Panamanian diplomat did not mention the United States by name.

290 Ibid., p. 289.

291 Ibid., p. 228.

292 Likewise, in 1990 OAS representative Einaudi called the 1989 Special Report on Panama "...the historic report of September 1989". OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, p. 192.

293 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, p. 253.

294 Ibid., p. 232.

295 Ibid., pp. 244-247, 261.

negative vote and no abstentions.²⁹⁶ In accordance, besides mentioning of the deplorable Panamanian human rights situation in paragraph 4 of the resolution on the IACHR reports,²⁹⁷ the General Assembly adopted another document referring to that particular situation in the country. This was the first time in a decade that a single Member State was scolded by a political OAS main organ with a separate resolution. The document on Panama accused the government and clearly expressed "...deep concern over the serious violations of fundamental rights and liberties..." Furthermore, the OAS resolution distinguished between the Panamanian people and the government. Despite the emphasis on nonintervention and an explicit call not to intervene unilaterally in Panamanian affairs, the aforementioned section furthered US goals by expressly separating a human rights abusing government from the innocent Panamanian population.²⁹⁸ In accordance, Luigi Einaudi, US Ambassador to the OAS, called Latin American delegations to support US endeavors in Panama without inappropriately relying on the non-intervention principle.²⁹⁹ Unfortunately, from a US perspective, the OAS did not do so and thus military force was seen as unavoidable to 'solve' the crisis in Panama. On December 20, 1989, approximately 14,000 assault troops invaded the country and carried out the so-called 'Operation Just Cause' installing military control. As expected, the OAS condemned the invasion by a 20-1 vote and the adopted resolution "deeply regretted" the military intervention. Moreover, the OAS urged to withdraw the "foreign troops used for the intervention."³⁰⁰

296 Ibid., p. 287.

297 AG/RES. 1022 (XIX-0/89): Reports of the Inter-American Commission on Human Rights, in: Proceedings, OEA/Ser.P/XIX.02., 22 diciembre 1989, Volume I, Nineteenth Regular Session, Washington, D.C., November 13-18, 1989, pp. 116-119.

298 AG/RES. 990 (XIX-0/89): The Panamanian Crisis in the International Context, in: Proceedings, OEA/Ser.P/XIX.02., 22 diciembre 1989, Volume I, Nineteenth Regular Session, Washington, D.C., November 13-18, 1989, pp. 35/36.

299 Einaudi said: "The judgment of history will lay upon this organization. By improperly invoking the legitimate principle of nonintervention in this case, the OAS will find itself cast in the side of the dictators and tyrants of this world who are en route to extinction (...) It is time this organization put itself on the right side of history." Cited as in Eldon Kenworthy – *America/Américas. Myth in the Making of U.S. Policy Toward Latin America*, University Park, Pennsylvania 1995, p. 4.

300 OEA/Ser.G/CP/RES. 534 (800/89) corr. 1, 22 December 1989, Original: Spanish: Serious Events in the Republic of Panama. The Spanish resolution text was even

A Panamanian OAS representative later described the perception of the OAS in Panama after the US invasion, referring to its Spanish abbreviation, OEA, as follows: “*Olvidemos Ese Asunto*” (Let’s forget this issue).³⁰¹ At the extraordinary meeting of the Permanent Council, US ambassador Luigi Einaudi defended the military intervention with the “systematic human rights violations” exposed in the IACHR report.³⁰² While Chile, Brazil, and Haiti refused military action, Nicaragua fiercely condemned “US aggression.” Washington’s ally El Salvador was the only Member State that explicitly expressed a sympathetic attitude, because in its view Panama had provoked the US.³⁰³ The Panama invasion constituted the largest action carried out by US military since the Vietnam War. Finally, Noriega surrendered and was imprisoned on charges of drug-related crimes. The US established his challenger of the 1989 elections, Endara, as the new president.³⁰⁴ In accordance, at the 1990 General Assembly, the new Panamanian OAS representative applauded the IACHR and its chairman for their impartiality and the Commission’s support during the crisis.³⁰⁵ Kenworthy

harsher: it “deeply deplored” the intervention. OEA/Ser.G/CP/RES. 534 (800/89), 22 diciembre 1989, Original: español: *Graves acontecimientos en la República de Panama*. However, Nicaragua’s proposal to mention the United States by name in the resolution text was not heeded. Furthermore, as a reaction to the US invasion, Peru suspended its collaboration with the US anti-drug unit. Washington Post, December 23, 1989, pp. A7/A10.

301 Lawrence Chewning – La acción de la OEA en la defensa y consolidación de la democracia, in: *La OEA, a sus cincuenta años, reflexiona ante el siglo XXI*, Seminario sobre la O.E.A., Casa de América, October 1998, p. 58.

302 Einaudi said the following: “Noriega’s systemic and systematic violations of human rights of the people of Panama prompted the OAS General Assembly last month to take the unusual step of specifically endorsing the conclusions of the Special Report on Panama of the Inter-American Commission on Human Rights – a report which, I think, can only be characterized as devastating.” OEA/Ser.G, CP/ACTA 800/89; 20, 21 y 22 diciembre 1989, Acta de la sesión extraordinaria celebrada el 20, 21 y 22 de diciembre de 1989, p. 14.

303 Ibid., pp. 15, 31, 44.

304 Conniff, p. 642.

305 OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, pp. 196/197. In May 1990, Panama transmitted the instrument with which it recognized the jurisdiction of the Inter-American Court of Human Rights. Letter from Lawrence Chewning Fábrega, Permanent Representative of Panama, to João Clemente Baena Soares, Panama City, May 3, 1990. Annual

notes that US military interventions in Latin America showed an increasing tendency toward unilateralism: While the intervention in the Dominican Republic (1965) was formally accompanied by OAS troops, and the Grenada invasion (1983) requested and supported by members of the Organization of Eastern Caribbean States, the military take-over in Panama in 1989 was clearly an exclusively unilateral action.³⁰⁶ Furthermore, as pointed out before, the Panama invasion constituted the first US intervention during that period not motivated by Cold War concerns.

In summary, the OAS gave its last demonstration of ineffectiveness during the period of this investigation since it could have pressured Noriega to permit a substantial IACHR investigation and to follow the Commission's recommendations vigorously. On the other hand, the United States once more demonstrated its lack of sensitivity to Latin American national sovereignty.

Nevertheless, the hemispheric situation changed significantly in 1989/1990 when several events ushered in a less politicized environment, which directly impacted the human rights issue. The Canadian representative took the chair, which had been set out for this North American country at the Pan American Union, the OAS predecessor, in 1910.³⁰⁷ Canada alleviated the tight financial situation as the second largest contributor to the OAS budget, but also remained a human rights advocate.³⁰⁸ Further, Canada was seen as a counterpart to the predominant and national security focused United States. The OAS also had the potential to regain some international respect through its electoral observation missions.³⁰⁹ Furthermore, the loss of the Sandinistas in the 1990 elections smoothed the Central American tensions. In addition, the political battles were gradually displaced by economic and trade concerns: the South American customs union MERCOSUR and the historic North-American Free Trade Agreement (NAFTA)

Report of the IACHR 1989-1990, OEA/Ser.L/V/II.77 rev. 1, Doc. 7, 17 May 1990, Original: Spanish, p. 185.

306 Kenworthy, p. 11.

307 Stoetzer, p. 212; Washington Post, October 9, 1989, p. A15.

308 Interviews.

309 See AG/RES. 991 (XIX-0/89): Human Rights and Democracy – Electoral Monitoring; OEA/Ser.P/XXI.0.2, 6 abril 1991, Volumen II, Parte I, Vigésimo primer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Sesiones Plenarias, p. 40 (US Secretary of State, Lawrence Eagleburger).

were created. President Bush, who for the most part abandoned Reagan's unilateralism toward Latin America at least rhetorically, proposed the famous "Enterprise for the Americas", which called to establish a free trade area covering the entire hemisphere. This was surely a remarkable shift for inter-American affairs as well as for policy issues: trade politics – besides the problem of drug trafficking – converted into an essential link for US-Latin American relations. Observers spoke of a 'capitalist consensus' in Latin America that eventually replaced the last redeemers of the dependence theory.³¹⁰ Naturally, the return of many dictatorships and authoritarian regimes to a democratic transition constituted the major advancement in regards to the prevailing pro-democracy climate.

In this context, in 1991 there glimmered hope for democracy and human rights within the inter-American system. At the General Assembly in Santiago de Chile in June 1991, the OAS Member States adopted resolution 1080, which limited the nonintervention principle to a sensitive extent.³¹¹ After the regional redemocratization and the fall of the Soviet Union, the end of the East-West confrontation also decreased rivalries in international organizations. This contributed to an elevated willingness among governments to accuse human rights violations in other States. With the Santiago Commitment, the OAS Members anew promised to strengthen representative democracy and to promote the observance and defense of human rights. At the same time, the Member States agreed on a mechanism to react collectively upon military coups or the interruption of the democratic process, respectively. In accordance with resolution 1080, the Secretary General is responsible for initiating a process with which the organization can realize appropriate measures such as economic sanctions in reaction to a coup within 10 days.³¹² This meant de facto a sensitive limitation of

310 See, for instance, Lawrence E. Harrison – Finally, the Alliance Shows Progress, in: *The Washington Post*, March 17, 1991, p. D2.

311 AG/RES. 1080 (XXI-0/91): Representative Democracy. See: AG/RES. 1112 (XXI-0/91): The Santiago Commitment to Democracy and the Renewal of the Inter-American System (1991). See also: AG/RES. 1087 (XXIU-0/91): Education for Civic Participation and Democracy.

312 Stephen J. Schnably – The Santiago Commitment and the New World Order: Preliminary Thoughts on their Implications for Democracy and Human Rights in the Americas, in: ILSA (Ed.) – *Sistema Interamericano para la Protección de los Derechos Humanos: Aportes para una evaluación*, Santafé de Bogotá 1994, pp. 248-250.

the once sacrosanct principle of nonintervention. Accordingly, Schnably points out the importance as "...the firm rejection of any claim that a state's adherence to human rights norms, or a military's overthrow of an elected government, is purely a matter of domestic concern."³¹³ Likewise, former Chilean foreign minister and social scientist Heraldo Muñoz regards the democratic commitment of the 1991 gathering as a "historic step".³¹⁴ A Commissioner interpreted such resolution as a repudiation of the repressive past.³¹⁵ Besides resolution 1080, the OAS Assembly further adopted an action program, prepared by the Permanent Council, which outlined the "Strengthening of the OAS in the Area of Human Rights". Such resolution 1112 recommended that the IACHR Annual Reports include an overview on the general situation in the hemisphere as well as on one particular right or situation agreed on by the General Assembly. Furthermore, the document called the Commission to consider the activities of irregular groups as well as the "impact of continuing unfavorable economic conditions" on the human rights situation. Moreover, the IACHR was asked to regard the rights of minors, women, the handicapped, minorities, irregular migrants, refugees and displaced persons.³¹⁶ In general terms, besides the broadening of the Commission's human rights approach, the nonintervention principle, the major legal, even semi-philosophical weapon frequently used in the battle on human rights, suffered a decisive institutional defeat at the gathering in 1991.

At the 1991 General Assembly, which often has been called a 'historical' meeting, the Commission's former Executive Secretary, Edmundo Vargas, hosted the OAS community in his country as Vice

313 Ibid., p. 251. Symbolically, although he referred to the so-called Estrada doctrine, stressing national sovereignty, the Mexican representative, Santiago Onhate, welcomed resolution 1080. OEA/Ser.P/XXI.0.2, 6 abril 1991, Volumen II, Parte I, Vigésimo primer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Sesiones Plenarias, pp. 148/149.

314 Heraldo Muñoz – The OAS and Democratic Governance, in: *Journal of Democracy*, July 1993, Volume 4, Number 3, p. 29. Actually, the Fifth Meeting of the Presidential Council of the Andean Group preceded the 1991 General Assembly with similar findings in the same year. Heraldo Muñoz – The Right to Democracy in the Americas, in: *Journal of Interamerican Studies and World Affairs*, Vol. 40, No. 1, Spring 1998 (Coral Gables, Fla.), p. 9.

315 Interviews.

316 AG/RES. 1112 (XXI-0/91): Strengthening of the OAS in the Area of Human Rights.

Foreign Minister after many years in exile. As expected, he promised his government's full support to the Inter-American Commission on Human Rights, not without indirectly praising his role at the head of its Secretariat by recalling the reports on Nicaragua, Argentina, Chile and other countries.³¹⁷ The 1991 gathering saw a plenty of goodwill speeches on behalf of democracy and human rights as well as several resolutions in this respect.

With regard to the quick OAS action concerning the Haitian military coup against elected president Jean-Bertrand Aristide in September 1991,³¹⁸ Schnably observes a general tendency toward the acceptance of interfering in domestic affairs of States to protect human rights or democracy.³¹⁹ The OAS applied resolution 1080 firstly in the Haitian case (1991) and then as a reaction to Peruvian president Alberto Fujimori's so-called *autogolpe* (self-coup) in April 1992, when he dissolved the congress by decree.³²⁰ Moreover, the OAS also protested against the attempt of a self-coup by Guatemalan president Jorge Serrano Elías in May 1993. It is argued here, however, that the prevailing view of 1991 was overly optimistic. Human rights received more attention during the 1990s at the OAS, but the IACHR was often attacked by governments of the Member States for "exceeding its mandate."

In summary, the 1980s witnessed a Commission that emphasized the natural connection between human rights and representative democracy. The repeated reference to democracy as a necessary component for observing human rights paralleled to a certain extent

317 OEA/Ser.P/XXI.0.2, 6 abril 1992, Volumen II, Parte II, Vigésimo primer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Primera Comisión, pp. 111, 112.

318 Washington Post, October 9, 1991, pp. A1, A20. See: Annual Report of the IACHR 1991, OEA/Ser.L/V/II.81 rev. 1, Doc. 6, 14 February 1992, Original: Spanish, pp. 11, 16.

319 Schnably, p. 253.

320 See: Domingo E. Acevedo/Claudio Grossman – The Organization of American States and the Protection of Democracy, in: Tom J. Farer (Ed.) – Beyond Sovereignty. Collectively Defending Democracy in the Americas, Baltimore/London 1996, pp. 91-93; Peter Hakim – The OAS: Putting Principle into Practice, in: Journal of Democracy, July 1993, Volume 4, No. 3, pp. 38-49; Domingo E. Acevedo – The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy, in: Lori Fisler Damrosch (Ed.) – Enforcing Restraint. Collective Intervention in Internal Conflicts, New York 1993, pp. 123.

Reagan's reduced notion of democracy, which was preponderantly defined by elections.³²¹ Remarkably, the Central American conflict did not play as prominent of a role in the Commission's work during the 1980s, as should have been expected.

The IACHR was also affected by the organization's increasing insignificance largely provoked by financial shortcomings. In spite of this difficulty, the Commission made successful accomplishments: for instance, besides the drafting of very helpful human rights conventions,³²² it reported on the situation in Guatemala, Nicaragua and Chile. Nevertheless, the OAS General Assembly did not heed the Commission and so contributed to its lack of influence. As a result, the tremendous dynamic that had shaped the IACHR performance particularly between 1974-1980 got lost because important impulses from outside were missing. No Member State in Central America was actually threatened by a condemning General Assembly resolution based on a devastating IACHR report – times had changed.

As seen in the previous chapter, Reagan's Latin America policy and his administration's human rights concept focused primarily on Central America. The United States supported El Salvador's conservative regime both diplomatically and materially in its struggle against the leftist insurgents of the Farabundo Martí National Liberation Front (FMLN) and combated the Sandinista government in Nicaragua with economic sanctions, CIA measures, and logistical and material support for the right-wing Contras. However, the abuses carried out by the Sandinistas were not equal to the human rights violations committed by Salvadoran governmental forces.³²³ In this context, although

321 Farer remarks: "I refer to levels of human rights rather than democratic rights or simply "democracy," because the Reagan administration and its ideological out-riders insist in equating democracy exclusively with elections in which parties compete, the electorate is protected from overt intimidation, and its ballots are counted accurately, rather than seeing these as *necessary but not sufficient conditions*." Van den Haag/Farer, p. 117, emphasis in the original.

322 According to Article 19, e) of its Statute, the Commission explicitly had the power to "...submit additional draft protocols...in order progressively to include other rights and freedoms under the system of protection of the Convention..." AG/RES. 447 (IX-0/79) Statute of the IACHR, Article 19, e).

323 "The problem was that Nicaragua's security forces did not – as the Inter-American Commission on Human Rights made clear in its 1981 report – kidnap, torture, and kill unarmed civilians like their counterparts in El Salvador." Guest, p. 248. See Gorman/Walker, p. 114.

human rights entities such as the IACHR traditionally do not compare situations in different countries, a comparison is relevant in this case. The situation in El Salvador will be addressed in the following chapter.

IV. 3. The Commission's *Realpolitik*: The Case of El Salvador (1980-1991)

The 1978 Commission report on El Salvador based on the on-site investigation in January 1978 undoubtedly had extraordinary importance (see chapter III. 2.). Although internal discussions and IACHR Secretariat shortcomings resulted in the delay of the General Assembly's treatment of the report, it can still be considered as one of the most blunt documents prepared by the Commission. Finally, similar to the Nicaraguan case in 1978/79, the handling of the report by a political organ of the OAS contributed to – or in this case, most probably advanced – a radical change of Salvadoran government. So, besides the historical impact of the Nicaraguan report, the document on the Salvadoran human rights situation presented in 1979 also counts as one of the most critical and influential reports ever issued by the IACHR.³²⁴

In contrast to the significance of the 1978 document, the Report on the situation of human rights in El Salvador published after the civil war in 1994, merely relayed the Commission's activities during the armed conflict. Nevertheless, it could not explain and did not attempt to explain why the IACHR had not issued any Special Report on El Salvador between 1979 and 1992, the years of the bloodiest confrontation in the country's current history.³²⁵ During the 1980s, on several

324 Interestingly, in a confidential ARA document, the parts seemingly referring to the IACHR Report on El Salvador are blacked out with the remark "Not relevant to El Salvador". Notwithstanding, these lines apparently dealt with the Commission. Memorandum of Conversation, Subject: Assistant Secretary Todman's Meeting with the President of El Salvador and its Vice President, Participants: President Carlos Humberto Romero, Vice President Julio Abastacio, Salvadoran Ambassador to the U.S. Roberto Quiñonez-Meza, Assistant Secretary Terence A. Todman, U.S. Ambassador Frank J. Devine, DCH Earl H. Lubensky, Wade Matthews, ARA/CEN, Place: Presidential House, Confidential, Washington, D.C., January 27, 1978, p. 6. (NSA files).

325 IACHR –Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85 Doc. 28 rev., February 11, 1994.

occasions, the IACHR insisted on an on-site investigation in Salvadoran territory. Although the government of El Salvador principally or rhetorically agreed to an investigation in loco, such a visit did not take place before 1986. Furthermore, the IACHR was not able to present such an impressive performance on behalf of human rights – particularly in Central America – as it had been the case in the late 1970s. It is even more astonishing that the Commission did not play a decisive role during the 1980s in the Salvadoran armed conflict, because El Salvador had been party to the American Convention on Human Rights since 1978, and even possessed a monist legal system.³²⁶ This must lead to many questions, among which these prevail: Why could the Commission not carry out an on-site observation before 1986 and why did it not issue any Special Report on El Salvador until 1994? Was it lack of political support, obstacles set up by the powerful players or even unwillingness among the Commissioners themselves that led to such an omission? This chapter deals with a series of failed attempts at an IACHR on-site visit before 1986 and attempts to investigate the reasons for the absence of special reports on El Salvador during the 1980s.

During the 1970s, highly unfair distribution of land and wealth led to social unrest in El Salvador and ushered in the establishment of various partly armed opposition groups. On October 15, 1979 a civilian-military junta ousted the regime of General Carlos Humberto Romero and justified its coup mainly with the human rights violations committed by Romero's government. In fact, the US-backed coup was dispatched to prevent a revolutionary change like the Sandinista revolution. Initially, many Latin American countries and the United States welcomed the takeover of the junta. As one of its first encouraging actions, the civilian-military alliance issued several decrees considering human rights enforcement, agrarian reforms and amnesty laws.³²⁷ Subsequently, however, the new government could not halt the numerous and massive human rights violations committed by security and armed forces as well as by semi-governmental groups and death

326 Article 144, subparagraph 2 of the Salvadoran Constitution. *Constitución de la República de El Salvador* 1983, San Salvador 1989, 6th edition; IACHR – Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85 Doc. 28 rev., February 11, 1994, p. 80.

327 Klaas Dykmann – El Salvador: Die Menschenrechte im Visier, Hamburg 1999, p. 24.

squads linked to the military. In 1980, the repression reached its first peak and the major armed opposition forces united and formed the left-wing National Liberation Front Farabundo Martí (FMLN). In 1980 and 1981, the war between the Salvadoran government and the Marxist-inspired guerrillas erupted. This war lasted nearly 12 years. During the conflict, the United States feared a military takeover by the Soviet-supported leftist rebels and backed the center-right governments regardless of their human rights records – also a consequence of the Nicaraguan experience. The years between 1980 and 1983 marked the darkest period of recent Salvadoran history when reportedly up to 30,000 civilians lost their lives. Besides the abstract death tolls, many ‘prominent’ cases converted the bloody conflict in the most densely populated Central American country into an international public interest arena. In March 1980, the famous human rights defender and courageous theologian of liberation, Archbishop Oscar Arnulfo Romero was murdered by death squads. In November 1980, several opposition leaders were abducted, tortured and killed and in December, four US churchwomen were kidnapped, raped and slain by members of the National Guard.³²⁸ The latter case led the Carter administration to suspend military aid for the Salvadoran armed forces. However, Carter reinstated military support for El Salvador in January 1981 to prevent a military victory by the FMLN guerrilla forces. In 1978, Carter emphasized that the US should not support governmental forces that were engaged in serious human rights violations except in extraordinary circumstances.³²⁹ Apparently, the guerrilla’s *Ofensiva Final* of January 1981, which threatened the US-backed government junta, was such an exception. Facing the dread of a Marxist guerrilla military takeover, Carter reinstated military aid three days before leaving office and requested a \$5 million military credit for El Salvador. The money was to support the government of Christian Democrat José Napoleón Duarte, who had become president of the junta in late 1980.³³⁰ Duarte served as Salvadoran president between 1980 and 1982 and from 1984 to 1989. The PDC (Christian Democratic Party) became the main ally of US endeavors to contain and fight the leftist

328 The Maryknoll sisters Maura Clarke and Ita Ford, the Ursulina sister Dorothy Kazel as well as the lay worker Jean Donovan were murdered.

329 Presidential Directive/NSC-30, from US President James Carter, February 17, 1978, p. 2 (NSA files).

330 Pflüger, p. 265; Coatsworth, p. 155.

insurgency. At the same time, the Christian Democrats helped Washington maintain the executive's air of a presentable civilian government. Accordingly, with regard to the military offensive launched by the Salvadoran guerrillas, the change from Carter's closing *Realpolitik* – influenced by arguments of the domestic circumstantial relativism – to Reagan's sometimes paradoxically pragmatic ideological war, did not appear as abrupt as expected.³³¹ In Reagan's Central America policy, El Salvador was perceived as a "textbook case of Communist interference".³³² Therefore, anti-Communist governments had to be endorsed by the US in order to prevent the fall of the next 'domino'.³³³ In accordance, Washington consistently defended the human rights practice of the Salvadoran authorities despite injecting informal criticisms of its own.

The human rights NGO, Americas Watch, noted a propaganda war based on human rights led by the Reagan administration against the FMLN.³³⁴ Consequently, Americas Watch found in 1982 that "...the State Department has shown only selective respect for the human rights findings of the U.S. Embassy in San Salvador and that the basis

331 See Abraham F. Lowenthal – *Partners in Conflict. The United States and Latin America in the 1990s*, Second, revised edition (1st edition 1987), Baltimore/London 1990, pp. 45/46; Pflüger, p. 264.

332 United States Department of State – *Communist Interference in El Salvador. Documents Demonstrating Communist Support of the Salvadoran Insurgency*, February 23, 1981.

333 Usually, the 'hit list' or 'domino theory' applied to Central America after the Sandinista revolution has generously been described as a typical Cold War dread or even paranoia of the US. Notwithstanding, the author believes that if the guerrilla of the FMLN had assumed power in El Salvador, there might have been the possibility for an extension of Nicaraguan and Cuban influence in the region. Nevertheless, this must have preoccupied the US that traditionally considered Mexico and Central America as its 'backyard'. Whether such a 'domino' effect would have been desirable or not should not be discussed here, but it is not only necessary to blame US interventionism in Central America but also to acknowledge that there virtually existed a sort of 'threat' of a spreading left-wing movement in that region.

334 "In its zeal to support Duarte and to protect the U.S. aid program, the Reagan administration sought to portray the FMLN as the main source of human rights violations." Human Rights Watch/Americas Watch – *El Salvador's Decade of Terror: Human Rights since the Assassination of Archbishop Romero*, New Haven 1991, p. 127.

for this selectivity appears to be political.”³³⁵ On the other hand, according to US sources referring to FMLN documents, the FMLN began to activate a so-called “humanitarian front” and was eager to diminish US support for the government. It did this by exploiting the government’s human rights violations since 1984 and by providing “disinformation” to international institutions like the UN Human Rights Commission and the IACHR.³³⁶ Despite Reagan’s efforts to force El Salvador’s military and security forces to respect human rights minimum standards, his endeavors lacked credibility since the United States was determined to prevent a FMLN takeover at all costs.³³⁷ Likewise, Bonner commented illustratively on the quasi-vicious circle of US influence on El Salvador’s human rights performance: The Salvadoran armed forces received the human rights lectures, but despite the threat of reduced aid if abuses persisted, they continued the killings.³³⁸ Finally, Diskin and Sharpe conclude that both the Carter and the Reagan administrations often overestimated their influence on the situation in El Salvador.³³⁹ Practically, this meant that the role of the IACHR was – at least in theory – of more importance, since an institution mainly perceived as Latin American would have gained more attention among OAS Members.

Despite several deficiencies, the elections in 1982, 1984 and 1988 were increasingly democratic and served to present El Salvador as a democracy that fought against leftist terrorists and some right-wing radicals. The IACHR judged the questioned elections in 1982 as a sign

335 Americas Watch – U.S. Reporting on Human Rights in El Salvador: Methodology At Odds With Knowledge, New York, June 1982, p. 7.

336 US Department of State, Combined Message, Subject: CAJIT Special Advisory 04-89—FMLN Human Rights Front Groups (U), May 9, 1989 (NSA files). See also: US Department of State, Information Memorandum, from: HA Richard Schifter, to: P-Under Secretary Kimmit, Subject: The Public Relations Campaign against El Salvador, CONFIDENTIAL, Washington, D.C., March 8, 1989 (NSA files).

337 “How could the Salvadoran military take seriously U.S. threats to cease aid if Washington repeatedly made clear its intention to prevent a rebel victory?” Benjamin Schwarz – American Counterinsurgency Doctrine and El Salvador, Santa Monica 1991, p. 40.

338 Raymond Bonner – Weakness and Deceit. U.S. Policy and El Salvador, New York 1984, pp. 12/13.

339 Martin Diskin/Kenneth Sharpe – The Impact of U.S. Policy in El Salvador, 1979-1985, from the series: Policy Papers in International Affairs, No. 27, Berkeley 1986, p. 1.

that "...there is a desire among the people for a democratic government, and a definite solution to the internal conflict..."³⁴⁰

So, El Salvador did not appear as a typical right-wing dictatorship crusading to eradicate a rhetorically exaggerated, or even imaginary, leftist subversion because it actually faced an armed opposition. The Salvadoran governments were painted in Christian Democratic colors until 1989, though its armed and security forces continued to violate fundamental human rights. In other words, among OAS Member States, the Salvadoran situation was not as clear as, for instance, the one in the southern cone dictatorships. According to this complexity and the actual military threat by the Marxist guerrillas, the authorities in El Salvador received political support from Christian Democrats in Latin America and strategic and military assistance from the United States.

Although the Christian Democrat, José Napoleón Duarte, won the presidential elections in 1984 and promised to end human rights violations, the initial notable improvement did not last and serious abuses persisted. However, the fact that Duarte headed the junta since November 1980 and again in 1984 led to the silent support of Christian Democrat allies. In 1989, the right-wing party ARENA (National Republic Alliance) assumed power after an electoral victory over the Christian Democrats. In November, the assassination of Jesuit priests and their housekeepers by members of the armed guerrilla forces revived the heated debate on human rights in El Salvador both domestically and internationally.

In the late eighties, a working paper from the Salvadoran Foreign Ministry mentioned the following States as "friendly governments": Costa Rica, Dominican Republic, Colombia, Venezuela³⁴¹, Honduras and Brazil. It further named the direct contact and logistical support from the US.³⁴²

340 Annual Report of the Inter-American Commission on Human Rights 1981-1982, OEA/Ser.L/V/II.57 Doc. 6 rev. 1, 20 September 1982, Original: Spanish, p. 117.

341 See: Roy Gutman – *Banana Diplomacy. The Making of American Policy in Nicaragua 1981-1987*, New York 1988, p. 162.

342 Ministerio de Relaciones Exteriores, *Plan de Trabajo a seguir con relación al mandato sobre El Salvador en la cuestión de los derechos humanos, con avances hasta 1989*, without date, p. 21 (Files of the Salvadoran Foreign Ministry, FMES files).

Especially since the situation in El Salvador was more complex regarding its regional and international impact, it must be of the highest curiosity to learn how the renowned Human Rights Commission of the OAS reacted. The research on El Salvador's human rights situation during the civil war has extensively examined the human rights violations committed by government and paramilitary forces. Further, the multiple roles of the United States and the mediating efforts of the United Nations have been subject to prolific research as well. However, the positions of the OAS and the Inter-American Commission on Human Rights (IACHR) during the conflict still constitute a gap of research. Beyond the expert interviews, the author has had the privilege to assemble sources from the National Security Archives, the Salvadoran Foreign Ministry files and IACHR correspondence concerning El Salvador. Accordingly, this inquiry seeks to provide a new perspective on the role the Inter-American Commission on Human Rights played during the armed conflict.

Interestingly, the 1978 Special Report on El Salvador was the first that included a chapter on socioeconomic rights. The main reason for the bitter conflict is attributed commonly to the structural discrepancies in Salvadoran society between landowners and poor peasants. The oligarchic elite repressed the farm workers to maintain the unjust socioeconomic system. Consequently, in the 1970s, growing violent resistance against the ruling class tightened the vicious circle of violence, which thereby became a consequence of the inequality and an origin of violent acts itself. Since the Commission also regarded the chronic disrespect of such rights as the principal source of the widespread violence in El Salvador, it is interesting to analyze how the IACHR considered economic and social rights in the subsequent Annual Reports. In its 1979-1980 Report, the Commission made a reference to socioeconomic rights and dealt with the new agrarian reform.³⁴³ The Commission's chairman, Farer, also referred to the economic and social rights in El Salvador during his presentation of the Annual Report at the General Assembly in 1980. As mentioned in foregoing chapters, later on – consciously or more likely by accident – the IACHR reports somehow mirrored the Reagan administration's

343 Annual Report of the Inter-American Commission on Human Rights 1979-1980, OEA/Ser.L/V/II.50 Doc. 13 rev. 1, 2 October 1980, Original: Spanish, pp. 144/145.

neglecting of economic and social rights, switching even more in favor of democracy instead. In 1992-93, however, the Commission reports revisited socioeconomic rights as a main element for the guarantee of human rights.³⁴⁴ Moreover, the adoption of the Additional Protocol on Economic, Social and Cultural Rights to the American Convention during the General Assembly in San Salvador appears somehow awkward. In regard of the aforementioned socioeconomic situation, it is highly ironic, if not cynical, to describe the Additional Protocol on Economic, Social and Cultural Rights of 1988 as the 'Protocol of San Salvador'. This example shows that the questionable harmonious tendencies within the OAS prevailed over the more prudent ideas of political and moral appropriateness.

Ironically, in May 1979, before the Romero regime was ousted, the conservative Salvadoran diplomat Francisco Bertrand Galindo had been elected a Commission member.³⁴⁵ Some people familiar with the Commission alleged that he had always been a factor of insecurity (see chapter II. 2.). Of course, Bertrand Galindo also served for the Salvadoran governments as ambassador to Chile and to Guatemala, another conflict region during the decade of the 1980s. Former commissioner Tom Farer stated that "...we operated thereafter with the feeling that we had in our midst someone who was an instrument of a government that was among the worst violators of human rights."³⁴⁶ The IACHR records and the files of the Salvadoran Foreign Ministry do not clearly indicate such a notorious betrayal of the Salvadoran's integrity, but a certain suspicion still remains.³⁴⁷

Conversely, Farer, the Commission's chairman between 1980 and 1982 – crucial years for El Salvador – confronted Reagan's chief human rights ideologist, Jeane Kirkpatrick, by criticizing her view on

344 IACHR –Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85 Doc. 28 rev., February 11, 1994, p. 7.

345 In 1978, Bertrand Galindo, at that time Salvadoran Permanent Representative, held that since Romero's taking power in 1977, El Salvador started to become a State with rule of law (*Rechtsstaat*). OEA/Ser.P/VIII.0.2, 30 diciembre 1978, Volumen II, Parte II, Octavo Período Ordinario de Sesiones, Washington, D.C., del 21 de junio al 1° de julio de 1978, Primera Comisión, p. 62.

346 Interview with Dean Tom J. Farer, Denver/Colorado, August 30, 1999.

347 Nevertheless, the files of the Foreign Ministry of El Salvador show that at least in one occasion, Bertrand Galindo apparently did not fully comply with the Statute of the Commission when he advised his government on voting strategies regarding the 1980 General Assembly. See chapters II. 2.; III. 3.

traditional military regimes. In contrast to Kirkpatrick's view, Farer wrote that the military rule in El Salvador had begun in 1932: "What was the characteristic of this period was not 'evolution' toward democracy but prevention of that evolution."³⁴⁸ This meant a clear confrontation between the Commissioner's view and the US position backing anti-Communist regimes.

In 1982, Bruce McColm who would later succeed Farer on the Commission, portrayed a fairly realistic picture of the situation in El Salvador by focusing on the Soviet/Cuban influence and Marxist subversives, which reflected Reagan's obsession with international Marxist expansionism. Although McColm was not Reagan's puppet, he actually shared a similar view of the Central American situation as the US administration. Further, in contrast to Farer, he blamed the media coverage of the situation in El Salvador as partly propagandistic. Finally McColm defended US assistance – including military aid – for the government of El Salvador in order to prevent "extremists from either side" from taking over control. Clearly, it was obvious that the US member on the Commission between 1984 and 1988 generally argued a position similar to that of the Reagan administration. In addition, McColm underlined that most Christian Democratic parties and governments in the region supported their counterparts in El Salvador.³⁴⁹

In accordance, other influential members allegedly were sympathetic with the governments led by the Christian Democrat Duarte. José Napoleón Duarte had officially won the presidential elections in 1972 but subsequently was detained, tortured and expelled by the armed forces.³⁵⁰ Commissioner Fernando Volio Jiménez and the Executive Secretary were considered by some sources to back Duarte's government. In addition, the influential Venezuelan chairman Andrés

348 Cited as in Bonner, p. 238.

349 "Christian Democratic parties and governments in Latin America and Europe openly support their ideological colleagues in El Salvador. Indeed, most Latin American countries which have expressed views on the struggle in El Salvador unreservedly support Duarte." R. Bruce McColm – *El Salvador: peaceful Revolution or Armed Struggle? A Freedom House Perspective*, New York 1982, p. 44.

350 During the first IACHR visit to El Salvador in 1978, Christian Democratic representatives of the Commission used their network to get in touch with Salvadoran party members in order to get information on the human rights situation. Tom J. Farer – *The Grand Strategy*, p. 93.

Aguilar reportedly did not dare to accuse Duarte openly – the latter had gained an enduring respect and support from Christian Democrats in Latin America in general, and from Venezuela in particular (where he had spent his time in exile after 1972). In general, it seems possible that a powerful Christian Democratic faction within the IACHR did not want to blame Duarte's government with high publicity – neither with a visit in loco during the first years nor with a high-profile Special Report.³⁵¹ The emphasis revolves around two words: great publicity. Although the Annual Report sections dealing with El Salvador certainly accused also Duarte's different governments of continuing human rights violations, the Commission did not prepare a Special Report. Did the IACHR want to avoid even more publicity in the Salvadoran case? The hypothesis of a discreet support for Duarte's democratic project in El Salvador, especially on the part of sympathetic Christian Democrats in the IACHR, cannot be dismissed easily.

In relation to the introductory sentences of the Annual Report sections, there is a striking difference between the Guatemalan and the Salvadoran case. While the Commission stressed its “working closely” on events in Guatemala and Nicaragua, it only “monitored” and “reported” on the situation in El Salvador.³⁵² This slight idiomatic difference – if regarded superficially – might appear insignificant, but it demonstrates unequivocally the Commission's different handling of the human rights situation in Guatemala, Nicaragua and El Salvador. However, the Commission obviously followed the events in El Salvador.³⁵³ So why did it not decide to publish a Special Report? Probably, the IACHR chose the same strategy as in the Argentine case: to wait for an invitation by the government to visit the country in order to prepare a more substantial document.

351 Interviews.

352 “For more than ten years, the IACHR has maintained constant vigilance over the situation of human rights in El Salvador, keeping a very close eye on the most important events affecting its observance of those rights.” That was exactly what the IACHR did: most of the time it just kept an eye on the events. Annual Report of the Inter-American Commission on Human Rights 1987-1988, OEA/Ser.L/V/II.74 Doc. 10 rev. 1, 16 September 1988, Original: Spanish, p. 293.

353 For instance, see Letter from Edmundo Vargas Carreño to Andrés Aguilar, Washington, D.C., September 24, 1981. Enclosed to that letter, Vargas sent the discourse of the new president of the Revolutionary Junta in El Salvador, José Napoleón Duarte, to Aguilar (IACHR files).

In the following, some examples of the interactions between the Commission and the Salvadoran governments shall help to answer the previous questions.

In 1980, many cases were sent to the Commission, which then turned to the Foreign Ministry of El Salvador with requests for information.³⁵⁴ Initially, the Ministry categorically replied to the IACHR's requests by noting that the newly created Interministerial Commission on Social Rights would handle the petitions.³⁵⁵

In spring 1980, the IACHR decided to prepare reports on the human rights situation in Guatemala and Nicaragua – countries from which the committee had received invitations.³⁵⁶ Likewise, at its 51st session in November 1980, the Inter-American Commission on Human Rights considered an on-site observation in El Salvador. In reference to this, the Commission received the Salvadoran Foreign Minister, the Christian Democrat Fidel Chávez Mena, during its plenary session.³⁵⁷ It is possible that the Commission had already received an invitation for an inquiry in loco by a letter issued on October 8, 1980.³⁵⁸

As early as in 1980, the Salvadoran government announced that it would permit an IACHR on-site investigation. At the OAS General Assembly in 1980, the IACHR stated that the visit should take place in February 1981.³⁵⁹ It never happened.

354 Already in 1979, five weeks after the coup of the civil-military junta had taken place, a famous but also controversial Salvadoran NGO turned to the IACHR and deplored human rights violations and 200 murders under the new government junta. Letter from the Non-Governmental Human Rights Commission of El Salvador (CDHES) to the IACHR, San Salvador, November 26, 1979 (IACHR files).

355 Furthermore, the IACHR was able to mediate in a hostage-taking in San Salvador – comparable to the exemplary solution the Commission reached in the 1980 hostage crisis in Colombia.

356 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 27.

357 IACHR – Annual Report of the IACHR 1980-1981, OEA/Ser.L/V/II.54, doc. 9 rev. 1., 16 October 1981, Original: Spanish, p. 7.

358 Letter from Ernesto Arrieta Peralta, Permanent Representative, to: Tom J. Farer, IACHR Chairman, November 22, 1980 (IACHR files). In that communication, Arrieta refers to a letter of October 8, 1980, in which his government apparently invited the IACHR.

359 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II: Décimo Período Ordinario de Sesiones, Washington D.C., del 19 al 27 de noviembre de 1980, Pri-

There is evidence that since the assassination of the four US churchwomen on December 2, 1980, the US State Department emphatically encouraged the Salvadoran junta to invite the IACHR and to actually receive the Commission in El Salvador.³⁶⁰ Already on December 4, 1980, the IACHR received a communication on the disappearance of the three US nuns and a religious worker on that day. This note expressed the fear that these nuns could have been killed. The case is extensively mentioned in the 1982-1983 Annual Report.³⁶¹ The extensive coverage must be attributed to the media interest and to the fact that the victims were American citizens. Firstly, the fact that a petition was directed to the IACHR shortly after the crime demonstrates that at that time, trust and confidence remained with the Commission. But why did the Commission publish this information with such a delay? Did it try to avoid even more publicity from this famous case?

Between December 6 and 9, 1980, a "Special Presidential Mission", composed by William D. Rogers and Assistant Secretary of State, William G. Bowdler, stayed in El Salvador and anticipated organizations like the Inter-American Commission on Human Rights to investigate the nuns' case as well.³⁶² Interestingly, the US State Department wanted an IACHR investigation of the churchwomen's assassination to be presented as a sort of preparatory visit for the IACHR on-site observation planned for early 1981. A State Department cable demonstrates its belief that such an IACHR mission would actually serve as an advance mission for an on-site visit in 1981.³⁶³

mera Comisión, p. 61.

360 Document entitled "Text which can be used as basis of letter which Chavez Mena may send.", December 5, 1980 (NSA files); December 12 Statement on the Special Presidential Mission to El Salvador – December 6-9, 1980, December 12, 1980 (NSA files).

361 IACHR – Annual Report of the IACHR 1982-1983, OEA/Ser.L/V/II.61, doc. 22 rev. 1, 27 September 1983, Original: Spanish, p. 53.

362 December 12 Statement on the Special Presidential Mission to El Salvador – December 6-9, 1980 (NSA files), pp. 2/3.

363 "POSSIBLY THE SALVADORAN RELUCTANCE IS DUE TO A MISUNDERSTANDING OF THE NATURE OF THE IAHRC VISIT. IN ORDER TO AUTHORIZE TRAVEL, THE IAHRC MUST DESCRIBE THE REPRESENTATIVES AS AN ADVANCE PARTY OF THE COMMISSION'S VISIT PLANNED FOR EARLY NEXT YEAR. IT IS UNDER THIS UMBRELLA THAT THE IAHRC REPRESENTATIVES WILL GO TO OBSERVE THE INVESTIGATIONS OF THE DEATHS OF THE AMERICAN WOMEN." The US wanted the nuns' case to be investigated also because a thor-

The US obviously regarded such a one or two-member mission to investigate the murders as a preparatory visit for the expected overall investigation in March.³⁶⁴ Correspondingly, in January, El Salvador's Permanent Representative at the OAS, Ernesto Arrieta Peralta, invited the IACHR to investigate the case of the four churchwomen but clearly stated that the Commission did not have the competence to treat "isolated cases".³⁶⁵ Before, the Salvadoran Representative had received orders from the Foreign Ministry in this regard.³⁶⁶ The United States supported the invitation.³⁶⁷ However, it might be concluded that the Salvadoran government postponed the visit until after Reagan's inauguration. On the other hand, if the IACHR had carried out the "preparatory visit" straightaway, it would have been more difficult for the Salvadoran authorities to deny the permission for a general on-site investigation. However, this did not happen even though it was apparent that the Reagan administration favored an IACHR investigation in El Salvador. The IACHR had security concerns regarding a

ough inquiry was expected to improve the international reputation of Duarte's government. Cable, from: Secretary of State, Muskie, to AMEmbassy, San Salvador, Immediate, Confidential, State 338663, December 24, 1980 (NSA files). The Maryknoll Sisters, who had lost two of its members at the assassination on December 2, clearly urged the members of the Special Mission and US Secretary of State, Muskie, to vest the Commission's mandate with a general investigation of the overall human rights situation in El Salvador. Letter from Sister Melinda Roper, M.M., Community President, Maryknoll Sisters, to: William J. Bowdler, Assistant Secretary of State, and William D. Rogers, New York City, January 2, 1981; Letter from Sister Melinda Roper, to: US Secretary of State, Edmund Muskie, New York City, January 2, 1981 (NSA files).

364 Letter from William G. Bowdler, Assistant Secretary of State for Inter-American Affairs, to: Sister Melinda Roper, Maryknoll Sisters, Washington, D.C., January 15, 1981 (NSA files).

365 Letter from Ernesto Arrieta Peralta, to Edmundo Vargas Carreño, Washington, D.C., January 13, 1981. In another letter from the Salvadoran Ambassador to Vargas, which carries the same date as the foregoing one, El Salvador invited the Commission to visit the country in March 1981 (IACHR files). The US was gratified because of El Salvador's invitation to the IACHR. Department of State, Confidential, IMMEDIATE San Salvador, Subject: Military Assistance to El Salvador, January 13, 1981 (NSA files).

366 Radiogram from Alejandro Gomez Vides, Subsecretario del Ministerio de Relaciones Exteriores, to Ernesto Arrieta Peralta, San Salvador, December 19, 1980 (FMES files).

367 Cablegram, from: Secretary of State, Washington, D.C., to: AMConsul Rio de Janeiro, NIACT IMMEDIATE, INFO AMEmbassy Brasilia IMMEDIATE, January 14, 1981 (NSA files).

single staff member invited by the government.³⁶⁸ On March 9, 1981, Executive Secretary Vargas informed the Salvadoran OAS Mission that the Commission accepted the invitation. Vargas Carreño was charged with fixing the date for the on-site visit with the OAS Representative Arrieta.³⁶⁹ Nevertheless, the on-site observation was not carried out. Interestingly, the available IACHR files show a gap between March 1981 and September 1982 in regards to the Commission's correspondence with the Salvadoran authorities and the OAS Mission.³⁷⁰ At the General Assembly in 1981, the Salvadoran representative, Ernesto Arrieta Peralta, informed the Commission that his government had to postpone the planned visit.³⁷¹ In September 1982, the Salvadoran OAS representative Arrieta Peralta predicted problems with the IACHR report: he had found out that the Commission saw the invitation by the Salvadoran authorities as invalid due to the change of government after the 1982 elections. Arrieta recommended a new IACHR invitation and for private negotiations to set concrete dates for a visit during the forthcoming General Assembly.³⁷²

Arrieta's proposal was welcomed in the Foreign Ministry in San Salvador, though the government also was aware of the multiplying factor with regard to the handling of the human rights issue in international organizations.³⁷³ These documents apparently corroborate the thesis that the Salvadoran authorities occasionally wanted the Com-

368 See Cablegram, From: Secretary of State, Alexander Haig, Washington, D.C., to: AMEmbassy San Salvador, PRIORITY, CONFIDENTIAL STATE 021923, Subject: Possible IAHRC Role in GOES Investigation of Killing of US Missionaries, January 28, 1981 (NSA files). Although the Department of State considered that the IACHR would give El Salvador's invitation priority, the Commission had not replied to it by then.

369 Letter from Edmundo Vargas Carreño, to Ernesto Arrieta Peralta, Washington, D.C., March 9, 1981 (IACHR files).

370 Naturally, this could also be explained by other circumstances such as the deposit of letters at the office of the lawyer in charge, which were not available to the author.

371 OEA/Ser. P/XI.0.2, 4 diciembre 1984, Volumen II, Parte II, Undécimo Período Ordinario de Sesiones, Castries, Santa Lucía, Del 2 al 11 de diciembre 1981, Primera Comisión, p. 71.

372 Cablegram, from Ernesto Arrieta Peralta, to the Ministry of Foreign Relations, Washington, D.C., September 20, 1982. (FMES files).

373 Ministry of Foreign Relations, Memorandum, from: Director of International Organizations, to: Minister of Foreign Relations, Subject: Invitación del GOES a la CIDH, September 22, 1982. (FMES files).

mission to come to El Salvador. In accordance, on September 30, 1982, Ambassador Arrieta reiterated his government's invitation to the IACHR to visit the country.³⁷⁴ Although the IACHR Executive director immediately replied to such invitation by asking for permission for the observation, an on-site investigation did not take place.³⁷⁵ Apparently, on November 20, 1982, IACHR Executive Secretary Vargas Carreño phoned Ambassador Arrieta Peralta to ask for a date of the on-site observation. Arrieta, however, refused to determine a visit for January 1983 and did not fix a future date. Vargas was told to turn to Foreign Minister Fidel Mena Chávez.³⁷⁶

Again in 1983, El Salvador's OAS Ambassador Arrieta Peralta directed an invitation for an on-site observation in May or June from his government to the Commission's chairman Monroy Cabra.³⁷⁷

Eventually, the Commission was not granted permission to visit and did not carry out an on-site investigation in El Salvador during the early and worst years of the civil war. Nevertheless, to all observers there were efforts to actually receive the Commission at least in January 1981.³⁷⁸ The Commission seemingly had the unique opportunity to inquire the human rights situation in El Salvador before Reagan assumed power in the United States. It remains highly speculative whether some voices within the IACHR even desired to postpone the visit that seemed to be possible in December 1980 and January 1981 in order to wait until Reagan was sworn in. After Reagan's inauguration, the IACHR could possibly have justified its inactivity in regards to an on-site visit so as to not accuse Duarte's government publicly. It is not clear, however, if parts of the Commission itself played with such tactical considerations in order to gain time to silently support their Christian Democrat friend in San Salvador.

374 Letter from Ernesto Arrieta Peralta, to Edmundo Vargas Carreño, Washington, D.C., September 30, 1982 (IACHR files).

375 Letter from Edmundo Vargas Carreño, to Ernesto Arrieta Peralta, Washington, D.C., September 30, 1982 (IACHR files).

376 Informe de la Delegación de El Salvador, General Assembly 1982 (FMES files), p. 5.

377 Letter from the Permanent Mission of El Salvador at the OAS, Ambassador Ernesto Arrieta Peralta, to Marco Gerardo Monroy Cabra, Chairman of the IACHR, Washington, D.C., January 20, 1983 (IACHR files).

378 Cablegram from Ernesto Arrieta Peralta to Alejandro Gomez Vides, Subsecretary of the Ministry of Foreign Affairs, Washington, D.C., October 8, 1980. (FMES files).

Besides the question of an on-site visit, it is important to note how the general relationship between the Salvadoran executive and the IACHR developed during the years.

During 1980, the government's cooperation with the Commission was still high, it responded to many requests – probably a sign that the Carter administration still could put some pressure on the new junta.³⁷⁹ In accordance, the Commission received many cases during 1980 and 1981 and forwarded requests to the Salvadoran government. Later, the cases received notably diminished – most probably this could have been attributed to the lack of confidence or influence in the Commission, especially from victims or NGOs.³⁸⁰ The IACHR Annual Report for 1980 tended to describe the situation in El Salvador as a general climate of violence without clearly naming those responsible.³⁸¹ Furthermore, the Salvadoran government refused the proposition to hold the 1980 General Assembly due to the serious situation.

Notwithstanding, at the General Assembly in November 1980, chairman Tom Farer criticized the Salvadoran government because it did not fight right-wing violence as decidedly as it did the left-wing violence. Further, Farer depicted the situation as seen in the Commission by stressing that the withdrawal of leading civilians from the junta between January and March 1980 overlapped with an increasing

379 See: Annual Report of the Inter-American Commission on Human Rights 1979-1980, OEA/Ser.L/V/II.50 Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 140.

380 While the IACHR still received 3,402 petitions in 1980, the subsequent years witnessed a remarkable decline of denunciations; 1981: 564; 1982: 170, 1983: 203 (IACHR files). In contrast, the report of the UN Truth Commission of 1993 cites national human rights groups like Socorro Jurídico or Tutela Legal or the Human Rights Institute of the UCA (IDHUCA) with differing statistics: 1980: 11,903; 1981: 16,266; 1982: 5,962 (in this case figures of Socorro Jurídico). These contrasting statistics seem to corroborate the thesis that the Commission gradually drifted apart from the events in El Salvador and its human rights community. See: *De la locura a la esperanza. La guerra de doce años en El Salvador: Informe de la Comisión de la Verdad*, in: *Estudios Centroamericanos*, San Salvador, No. 533, Marzo 1993, Año XLVIII, pp. 177-196.

381 The report mentioned "...terrorist assaults by armed groups of the extreme left and the extreme right..." and affirmed a "[g]eneralized violence in recent months." Annual Report of the Inter-American Commission on Human Rights 1979-1980, p. 141.

wave of violence and a growing polarization.³⁸² This comment did not clearly state who committed violent acts and further employed very general terms due to the complicated situation in El Salvador. In general, the Assembly of 1980 did not pay much attention to the Salvadoran case probably because the situation was not as clear as in other occasions. Moreover, the Argentine case monopolized the meeting's attention as shown in chapter III. 3.

In the exceptional 1980-1981 Annual Report of the IACHR, which lacked a chapter referring to various countries, El Salvador was hardly mentioned aside from the "Summary execution" section.³⁸³ In October 1981, voices within the Salvadoran Foreign Ministry mentioned "defects and extralimitations" attributed to the IACHR's "politicization" with regard to the Commission's denunciations towards Chile.³⁸⁴ Accordingly, Foreign Minister Mena Chávez deplored the IACHR's "ideological deviations" in some cases and spoke of the "instrumentalization of human rights."³⁸⁵

The lack of an open discussion in the OAS on the atrocities committed in El Salvador seemingly led Mexico in 1981 to issue a joint declaration with France in which both governments recognized the guerrillas of the FMLN as a political representative force.³⁸⁶ While Rafael de la Colina, Mexico's experienced diplomat, defended the French-Mexican declaration generated by the massive human rights violations in El Salvador, Foreign Minister Fidel Mena Chávez stressed that the declaration had been rejected by most of the Latin American governments and that only Panama and Nicaragua had

382 OEA/Ser.P/X.0.2, 13 noviembre 1981, Volumen II, Parte II: Décimo Período Ordinario de Sesiones, Washington D.C., del 19 al 27 de noviembre de 1980, Primera Comisión, pp. 60, 61.

383 Annual Report of the Inter-American Commission on Human Rights 1980-1981, OEA/Ser.L/V/II.54 doc. 9 rev. 1, 16 October 1981, Original: Spanish, p. 111.

384 Memorandum, de: Lic. Michelle Gallardo de Gutiérrez, para: Lic. Oscar Castro Araujo, Director General de Política Exterior. Asunto: Opinión sobre la posición de Chile respecto de la Comisión de Derechos Humanos, San Salvador, October 20, 1981, p. 9 (FMES files).

385 Letter from Fidel Chávez Mena, Foreign Minister, to General Manuel Arturo Vivero Avila, Embajador Extraordinario y Plenipotenciario de Chile, San Salvador, October 22, 1981 (FMES files).

386 La Declaración Franco-Mexicana, in: *El Diario de Hoy*, San Salvador, August 29, 1981, reprinted in: ECA 395, September 1981, Año XXXVI, p. 916.

openly welcomed this step.³⁸⁷ Accordingly, the OAS resolution on the IACHR reports, mirrored a reaction against the bipartisan declaration.³⁸⁸ The OAS supported the announced elections in El Salvador by a 22-to-3 vote, only Mexico, Nicaragua and Grenada opposed while Panama and three Caribbean States abstained.³⁸⁹ The resolution was counted as a clear encouragement for the Salvadoran government.³⁹⁰ A US diplomat quoted in the *Washington Post* said that a major aim of the resolution's backers was to vote differently from the preceding week's United Nations General Assembly, which had expressed certain sympathy for the guerrilla's cause.³⁹¹

The Commission report for 1981-1982 stated that the "...right to life continues to be the right that is under the greatest attack" and that the IACHR regularly received lists of civilians killed by government agents that were not actively involved in subversion. Furthermore, that document referred to sources like the US Embassy, the Legal Aid Office of the Catholic Church and even to an Associated Press report. This reference to second-hand sources and even media reports could be seen as the loss of the Commission's direct contact to NGO sources in El Salvador and as a proof of the victim's loss of trust in the IACHR.³⁹² Moreover, the fact that according to the Foreign Ministry and IACHR files, very few individual cases were received and handled by the IACHR supports this assumption. Accordingly, a confidential report by the Salvadoran delegation at the 1982 General Assembly of the OAS claimed that the IACHR reports did not require

387 OEA/Ser.P/XI.0.2, 4 diciembre 1984, Vol. II, Parte I; Undécimo Período Ordinario de Sesiones, Castries, Santa Lucía, del 2 al 11 de diciembre de 1981, Actas y Documentos, Vol. II, Primera Parte, Actas textuales de las sesiones plenarias y de la Comisión General, p. 185.

388 *Washington Post*, December 7, 1981, p. A22. The Assembly adopted a resolution on the "Situation in El Salvador", which was not very concrete and merely repudiated violence and terrorism – without naming responsables – but also refused any act that constituted a violation of the non-intervention principle. AG/RES. 551 (XI-0/81): Situación en El Salvador, in: OEA/Ser.P/XI.0.2, 24 junio, 1982, Volumen I: Actas y Documentos, Textos certificados de las resoluciones, pp. 78/79.

389 Saint Lucia, Suriname and Trinidad & Tobago as well as Panama abstained.

390 US State Department, Telegram, Confidential, December 22, 1981 (NSA files).

391 *Washington Post*, December 9, 1981, p. A18.

392 Annual Report of the Inter-American Commission on Human Rights 1981-1982, OEA/Ser.L/V/II.57 Doc. 6 rev. 1, 20 September 1982, Original: Spanish, pp. 115/116.

any more respect.³⁹³ Besides the Commission's lack of direct contact with the events in El Salvador, this could also be interpreted as a result of Reagan's overwhelming influence with regard to the case of Central America. Correspondingly, the resolution on the IACHR Annual Report was very general, no single Member State was mentioned, as it became the common practice during the 1980s. Nevertheless, in 1982 this procedure still caused disappointment and protests by many delegations. A statement made by the Mexican delegate José Luis Vallarta in 1982 is of particular interest in this context:

For known reasons the IACHR has abandoned the practice of preparing Special Reports on Member States whose governments notoriously engage in grave human rights violations.³⁹⁴

Apparently, in consideration of the Mexican interest in El Salvador's human rights record and its recognition of the armed opposition, Vallarta could have been referring to the omission of a Special Report on the human rights situation in El Salvador. The fact that the Commission had prepared Special Reports on Guatemala and Nicaragua supports this interpretation. Nevertheless, the "known reasons" mentioned by the Mexican diplomat that led to this omission by the IACHR are not clear. Did he refer to US influence on the Commission? There is reason to believe so, because in these years, Mexico became a major player in the Central American conflicts and indirectly, but visibly, antagonistic of the US approach for the region.

In 1983, the Commission returned to its practice of 1981 to not to include a chapter on particular countries in its Annual Report. Nevertheless, the report expressed the IACHR's concern over the "continued climate of violence" in El Salvador, which was mainly attributed to security forces and paramilitary groups who "...would seem to be acting with the Government's tacit consent."³⁹⁵ At the 1983 General Assembly of the Organization of American States, El Salvador's rep-

393 Informe de la Delegación de El Salvador, General Assembly 1982 (FMES files), p. 5.

394 "Por razones conocidas la C.I.D.H. ha abandonado la práctica de preparar informes especiales sobre los Estados Miembros cuyos gobiernos incurren notoriamente en graves violaciones a los derechos humanos." (English translation by the author). OEA/Ser.P/XII.0.2, 29 julio 1983, Volumen II, Parte 1, Actas Textuales de las Sesiones Plenarias y de la Comisión General, p. 243.

395 Annual Report of the Inter-American Commission on Human Rights 1982-1983, OEA/Ser.L/V/II.61 Doc. 22 rev. 1, 27 September 1983, Original: Spanish, p. 11.

representative Sara Ventura de Nosiglia energetically rejected the Commission's remark that illegal executions and disappearances in her country were committed by security forces acting with impunity. She called those abuses "individual excesses". Further, Ventura showed some inventiveness when she claimed that guerrilla sabotage and the destruction of the economic infrastructure constituted a violation not only of socioeconomic rights but of the "right to spiritual tranquillity of the entire people of El Salvador".³⁹⁶

In 1984, the Commission deplored the non-cooperation of the Salvadoran government. But at the same time, the 1984 report praised the victory of Christian Democrat José Napoleón Duarte in the presidential elections. Notwithstanding, the text still reported on death squad activities, assassinations, kidnappings, indiscriminate bombings of the civilian population, disappearances and illegal detentions.³⁹⁷ The Salvadoran government had invited the IACHR to be present at the electoral process in March 1984, but the IACHR did not take advantage of this indirect opportunity to inquire into the country's human rights situation.³⁹⁸ While Executive Secretary Vargas Carreño explained his personal indispensability with his commitment to the Commission on Forced Disappearances in Buenos Aires³⁹⁹ before his expected testimony, chairman César Sepúlveda's rejection of the supervising mandate is not explained. Furthermore, the fact that the Salvadoran OAS Ambassador sent invitations to the executive director and the Commission's chairman supports the theory that it would have been possi-

396 OEA/Ser.P/XIII.0.2, 14 noviembre 1983, Volumen II, Parte II, Décimotercer período ordinario de sesiones, Washington, D.C., del 14 al 18 de noviembre de 1983, Primera Comisión, pp. 99, 100.

397 Annual Report of the Inter-American Commission on Human Rights 1983-1984, OEA/Ser.L/V/II.63 doc. 10 rev. 1, 24 September 1984, Original: Spanish, pp. 96-103. See Washington Post, October 7, 1984, p. A37.

398 Letter from Oscar Castro Araujo, Permanent Representative, to Edmundo Vargas Carreño, Washington, D.C., February 16, 1984. Letter from Oscar Castro Araujo, to César Sepúlveda, IACHR Chairman, Washington, D.C., February 16, 1984 (IACHR files). Both letters contain the same wording.

399 Letter from Edmundo Vargas Carreño, to Oscar Castro Araujo, Washington, D.C., February 16, 1984. Vargas actually testified before the CONADEP Commission during the electoral process. He informed Secretary General Orfila that he would stay in Argentina between March 26 and 30, 1984 in "official mission". Memorandum from Edmundo Vargas Carreño, to Alejandro Orfila, Washington, D.C., March 23, 1984 (IACHR files). See Annual Report of the IACHR 1983-1984, OEA/Ser.L/V/II.63 doc. 10, 24 September 1984, Original: Spanish, p. 19.

ble to send the vice chairman (or any other Commission member) to supervise the elections while monitoring the human rights situation. Since the elections on March 25, 1984 did not designate a clear winner, the second ballot on May 6, 1984 offered another opportunity for monitoring. However, this opportunity, as apparently others before, was missed.

Considering the high absence of governmental replies to IACHR requests, the Commission's recommendations in the 1984 Annual Report surprisingly did not call for an improved cooperation.⁴⁰⁰ This can be interpreted as a sign of resignation or realism. In the report for 1984-1985, however, the Commission urged the General Assembly to consider the fact that the Salvadoran government had increasingly failed to cooperate. Moreover, the 1984-1985 report declared that Duarte, who had promised to improve the human rights situation, did not achieve much in this regard – a clear distinction from the appeasing US position. The Salvadoran government of José Napoleón Duarte was not able to fight the human rights violations in that country effectively. One and a half-years after his inauguration as the first elected civilian president in fifty years, Duarte could not keep his promises. Furthermore, the document clearly indicated the armed forces as the major perpetrators of human rights violations, though it did not hold the guerrillas immune from accusations of violence.⁴⁰¹ Finally, the report presented Salvadoran death toll statistics without identifying its sources.⁴⁰²

The report's perspective was the appropriate view of the situation in El Salvador at that time. However, during the lecture on the annual reports, the author was given the impression that the Commission was revealing that they would be impotent to play a mediating role in the Salvadoran conflict. Naturally, the Commission did not explicitly express this, but it seemed to have accepted its subordinated role as a mere spectator of events in El Salvador. Likewise, at the 1985 General

400 Annual Report of the Inter-American Commission on Human Rights 1983-1984, OEA/Ser.L/V/II.63 doc. 10 rev. 1, 24 September 1984, Original: Spanish, pp. 96-103.

401 Annual Report of the Inter-American Commission on Human Rights 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985, Original: Spanish, pp. 139, 141, 142.

402 Annual Report of the IACHR 1984-1985, OEA/Ser.L/V/II.66 doc. 10 rev. 1, October 1st 1985, Original: Spanish, pp. 139-141.

Assembly, chairman Aguilar mentioned the government's lack of cooperation in some cases. Aguilar expressed his hope that this situation would improve.⁴⁰³

In 1986, the Commission conducted an on-site observation and subsequently mentioned the positively changed situation in regard to the government's increased level of cooperation.⁴⁰⁴ Chairman Luis Adolfo Siles Salinas and vice chairman Marco Tulio Bruni Celli were accompanied by staff attorneys Manuel Velasco Clark and Luis F. Jiménez. After the visit, the Salvadoran government promised to investigate the cases regarding information that was lacking and to respond accordingly.⁴⁰⁵ The question arises whether it was necessary and possible to prepare a Special Report on the on-site investigation. Without any doubt, it would have been necessary, but seemingly it was not possible, nor desirable, to issue such a document at that time. Nevertheless, in a 1986 Salvadoran Foreign Ministry document, the government stressed the importance of the Inter-American Commission on Human Rights. Further, the hope was expressed to positively change the chairman's impressions on the human rights situation in El Salvador during his visit.⁴⁰⁶

The IACHR Annual Report for 1985-1986 identified the persisting war as the main source of violence, but also named a substantial improvement in view of diminished abuses. Finally, the document concluded that "...during the period covered by this report, the Commission has found that significant progress has been made in El Salvador in the observance of human rights, although there are undoubtedly important restrictions and limitations on the full exercise of those

403 OEA/Ser.P AG/Com.I/ACTA 2/85, 5 diciembre 1985, Textual: Primera Comisión, Asuntos Jurídicos y Políticos, Acta de la Segunda Sesión, p. 16.

404 See: Letter from Luis Adolfo Siles Salinas, IACHR Chairman, to Lic. Rodolfo Antonio Castillo Claramount, Foreign Minister, Washington, D.C., April 15, 1986 (IACHR files). In that letter, the IACHR chairman requested the government's permission to conduct an on-site inquiry to investigate some cases, which had been without response since various years. The solicitude is written in an almost unusually polite tone.

405 Annual Report of the IACHR 1985-1986, OEA/Ser.L/V/II.68 Doc. 8 rev. 1, 26 September 1986, Original: Spanish, pp. 32, 33.

406 Memorandum, de: Dirección de Organismos Internacionales, para: Lic. Rodolfo Antonio Castillo Claramount, Vice Presidente de la República y Ministro de Relaciones Exteriores, Asunto: Remisión Ayuda Memoria Temas OEA, San Salvador, June 27, 1986, p. 1 (FMES files).

rights.”⁴⁰⁷ In accordance, the Salvadoran OAS representative at the General Assembly, Mario Rivera Mora, by and large praised the Commission’s work.⁴⁰⁸ In that year, the Salvadoran government considered the possibility of ratifying the Inter-American Convention to Prevent and Sanction Torture but the Foreign Ministry refused the idea.⁴⁰⁹

The following year, staff lawyer Manuel Velasco Clark traveled to El Salvador with the consent of the government and conducted an on-site observation between February 15-19, 1987. He presented his report to the Commission in March 1987.⁴¹⁰ The fact that only one staff attorney conducted the investigation at first suggests the relatively minor significance of the Salvadoran case for the IACHR, however, it is very likely that the Salvadoran government could have insisted on a one-person visit in order to limit the publicity. Furthermore, it is possible that the tense budgetary situation of the IACHR did not permit a more extensive scrutiny.⁴¹¹

At the General Assembly, the Salvadoran delegation criticized the Annual Report for 1987. Representative Mauricio Granillo Barrera wanted to clarify the document’s findings because the latter constituted some terms, which allegedly reflected a false idea that could

407 Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68 doc. 8 rev. 1, 26 September 1986, Original: Spanish, pp. 150, 151, 155.

408 OEA/Ser.P/XVI.0.2, 27 julio 1987, Volumen II, Parte II, Décimosexto período ordinario de sesiones, Ciudad de Guatemala, Guatemala, Del 10 al 15 de noviembre de 1986, Primera Comisión, pp. 113-116. The Salvadoran delegate further referred to each finding of the Annual Report concerning his government.

409 Memorandum, from: Dirección de Organismos Internacionales, para: Asesoría Jurídica, Asunto: Remisión de Textos de la Convención Interamericana para Prevenir y Sancionar la Tortura, San Salvador, June 23, 1986 (FMES files). The memorandum carries two handwritten comments: First “Study the possibility of ratification” (“Estudiar posibilidad de ratificación”) and, apparently as a sort of response to the first remark, “I already respond: not convenient.” (“Ya contesto, no conviene.”). In 1987, the General Director for Foreign Policy and the Director of the governmental Human Rights Commission also considered a ratification of the convention as not adequate at that time. Cablegram Foreign Ministry, to Joaquín Alexander Maza Martelli, Vice Minister of Foreign Affairs, from: Permanent Representative, Mauricio Granillo Barrera, Washington, D.C., November 18, 1987 (FMES files).

410 See Annual Report of the IACHR 1986-1987, OEA/Ser.L/V/II.71 Doc. 9 rev. 1, 22 September 1987, Original: Spanish, p. 24.

411 Interviews.

generate a deformed image of the situation in El Salvador. While Granillo presented his government as willing to improve the human rights situation and to talk with the FMLN, he blamed the guerrillas for the violence. Further, he spoke of NGOs that purportedly were assaulted only in order to try to use these attacks to blame the government.⁴¹²

In contrast to the hopeful message of the findings in 1986-87, the 1987-1988 Annual Report again confirmed a worsening human rights situation⁴¹³, though the Vice Minister of Foreign Affairs had asked the IACHR chairman Siles Salinas not to transmit some cases concerning El Salvador to the General Assembly.⁴¹⁴

Then, in 1988, the Commission requested the government's permission for another "inspection visit" to El Salvador in order to consider individual cases – without a positive reply.⁴¹⁵ Nevertheless, in that year, the OAS Ambassador directed an invitation to the IACHR and invited two Commissioners to observe the electoral process that occurred on March 20, 1988.⁴¹⁶ The chairman of the Commission, Marco Tulio Bruni Celli, lamented that the IACHR was not able to accept the government's invitation because the Commission would be in session until March 25 and every member was indispensable and must attend the meetings.⁴¹⁷ Again, the Commission would have had the possibility to use such invitation for an undeclared investigation, but did not do so. According to its Statute, the Commission could have transferred its meetings to San Salvador, as it had done before in pre-

412 OEA/Ser.P/XVII.0.2, 14 noviembre 1987, Volumen II, Parte II, Décimoséptimo período ordinario de sesiones, Washington, D.C., Del 9 al 14 de noviembre de 1987, Primera Comisión, pp. 94-101.

413 Annual Report of the Inter-American Commission on Human Rights 1987-1988, OEA/Ser.L/V/II.74 Doc. 10 rev. 1, 16 September 1988, Original: Spanish, p. 300.

414 Letter from Joaquín Alexander Maza Martelli, Vice Minister of Foreign Affairs, to Luis Adolfo Siles Salinas, IACHR President, San Salvador, March 18, 1987 (FMES files).

415 Annual Report of the IACHR 1987-1988, OEA/Ser.L/V/II.74, Doc. 10 rev. 1, 16 September 1988, Original: Spanish, p. 13.

416 Letter from Mauricio Granillo Barrera, Permanent Representative, to Edmundo Vargas Carreño, Washington, D.C., March 3, 1988 (IACHR files).

417 Letter from Marco Tulio Bruni Celli, IACHR Chairman, to Dr. Ernesto Rivas-Gallont, Permanent Representative, Washington, D.C., March 17, 1988 (IACHR files).

vious occasions in which it had taken advantage of this provision, and so met in a Member State.

In 1988, the OAS General Assembly gathered in San Salvador, which signified a valuable recognition and support of the Salvadoran government.⁴¹⁸ As the Chilean meeting in 1976 and the 1986 Assembly in Guatemala City backed the host governments, the General Assembly in 1988 also meant international relief and a demonstration of respect for the government in San Salvador.⁴¹⁹ At the session of the First Committee, the Salvadoran representative and director of the governmental human rights commission, Benjamín Cestoni, criticized the Commission report. He dismissed terms like “irregular forces”, “guerrilla” or “subversive forces” and made clear that the only name the FMLN deserved was “terrorist groups”. Further, Cestoni implored that the IACHR Annual Report not mention FMLN violence and sabotage acts, and blamed the opposition forces for suspending the dialogue with the government.⁴²⁰

In 1989, the newly elected president, Alfredo Cristiani from the right-wing party ARENA, met with the Commission in Washington, reportedly in a climate of “cordiality and frankness.”⁴²¹ According to an internal IACHR paper in 1989, the Commission received almost daily denunciations of horrible assassinations alleged to military and paramilitary groups.⁴²² In November of that year, the FMLN initiated a massive military offensive (*ofensiva hasta el tope*) against governmental troops. In the course of the struggles, members of the armed

418 The FMLN forces declared a five-day cease fire during the meeting to demonstrate their good will. Washington Post, November 15, 1988, p. A22.

419 See: AG/RES. 952 (XVIII-0/88): Tribute to the People and President of El Salvador, in: OEA/Ser.P/XVIII.0.2, 10 March 1989, Volume I, Eighteenth Regular Session, San Salvador, El Salvador, November 14-19, 1988, p. 85.

420 OEA/Ser.P/XVIII.0.2, 27 octubre 1989, Volumen II, Parte II, Décimotercero período ordinario de sesiones, San Salvador, El Salvador, Del 14 al 19 de noviembre de 1988, Primera Comisión, pp. 114-120.

421 Annual Report of the Inter-American Commission on Human Rights 1988-1989, OEA/Ser.L/V/II.76 Doc. 10, 18 September 1989, Original: Spanish, p. 165.

422 IACHR document without date and author. Title: Algunos puntos para ser considerados en la entrevista con el presidente electo de El Salvador. Señor Alfredo Cristiani (IACHR files). Likewise, a secret cablegram of the US Embassy in San Salvador reported a worsening human rights situation in early 1989. Telegram, from: AMEMBassy, San Salvador, to: Secretary of State, Washington, D.C., Subject: USG Response to deterioration in human rights situation in El Salvador, SECRET, January 7, 1989 (NSA files).

forces killed six Jesuit priests, one cook and her daughter at the Central American University (UCA) – a crime that provoked high international attention. During the military confrontations, OAS Secretary Baena Soares stayed in San Salvador where he had intended to pursue peace talks.⁴²³ The OAS Permanent Council gathered immediately, and at first glance, seemed to be more concerned about its Secretary General's fate than about the civil victims of the struggles.⁴²⁴ The US representative to the OAS, Einaudi, criticized the FMLN and, as expected, backed the government in its "...efforts to expand the rule of law and to fight for human rights."⁴²⁵

At the 1989 Assembly the OAS representative of El Salvador, Roberto Mejía Trabanino, claimed that FMLN violence and terrorist acts would impede a full observance of human rights and further considered the IACHR report somehow "partial about the authentic national reality" because it did not deal with the victims affected by the FMLN acts nor the damage of the economic infrastructure. In addition, Mejía denounced the IACHR report's omission of the government's efforts to construct houses for the poor and other projects advancing economic, social and cultural rights. Moreover, the representative followed the government's instructions and blamed the FMLN for the killing of the Jesuits at the UCA.⁴²⁶ In accordance, US Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs, Paula Dobriansky, labeled the insurgency as the main obstacle for human rights in El Salvador and blamed the FMLN for "wide

423 AG/RES. 965 (XIX-0/89): The Situation in El Salvador, in: OEA/Ser.P/XIX.0.2, 22 diciembre 1989, Volume I, Nineteenth Regular Session, Washington, D.C., November 13-18, 1989, p. 5.

424 See: OEA/Ser.G CP/RES. 533 (797/89), 21 November 1989, Original: Spanish: Protection of the civilian population of El Salvador.

425 OEA/Ser.G, CP/ACTA 797/89, 21 y 22 noviembre 1989, Acta de la sesión extraordinaria celebrada el 21 y 22 de noviembre de 1989, pp. 13/14.

426 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, p. 163, pp. 163-165 (Jesuit murder). Also OAS Ambassador Mauricio Granillo Barrera tried to accuse the FMLN of the Jesuits' assassination. See OEA/Ser.G, CP/ACTA 798/89, 30 noviembre 1989, Acta de la sesión extraordinaria celebrada el 30 de noviembre de 1989, p. 8. See: Pedro Armada/Martha Doggett – Dead foretold. The Jesuit Murders in El Salvador, 1993; Klaas Dykmann – El Salvador: Die Menschenrechte im Visier, Hamburg 1999, pp. 71-75.

spread horrifying acts of violence".⁴²⁷ In addition, a letter by 14 members of the US Congress was read before the First Committee of the General Assembly in reference to the Jesuit case. The document urged the Assembly to work with the Salvadoran government to invite the IACHR to investigate the assassinations.⁴²⁸ In general, at the Permanent Council sessions and the General Assembly meeting in November 1989, the delegations of El Salvador, backed by the US mission, sometimes battled polemically with the Nicaraguan diplomats on human rights matters between these two Central American countries.

The November 1989 military offensive launched by the FMLN and the assassination of the Jesuits were the main topics of the Annual Report section on El Salvador covering 1989-1990. The Commission expressed its "deep concern" in relation to the state of human rights in El Salvador and was worried about the escalation of the armed conflict that contributed to the worsening of the situation. Besides this adequate finding, the Commission provided a comment that must have sounded almost cynical in view of the atrocities in the early eighties: "The Commission must note that it has decided to prepare a special report on the human rights situation in El Salvador."⁴²⁹ At that time, there were voices in the IACHR Secretariat that perceived El Salvador as the country with the worst human rights problems, whereby it would need special attention by the Commission. Unfortunately, individuals with such opinion could not make themselves heard and less so gained a majority.

The government disliked the section on El Salvador in the 1990 Report and criticized the omissions. Moreover, the Foreign Ministry considered the possibility of accepting the offer for a Commission visit as a measure of dealing with the IACHR. Furthermore, the government wanted to present an internal candidate for the election of new Commissioners in 1991.⁴³⁰ This leads to the assumption that the

427 OEA/Ser.P/XIX.0.2, 29 abril 1991, Volumen II, Parte II, Décimonoveno período ordinario de sesiones, Washington, D.C., Del 13 al 18 de noviembre de 1989, Primera Comisión, p. 190.

428 Ibid., pp. 295/296.

429 Annual Report of the Inter-American Commission on Human Rights 1989-1990, OEA/Ser.L/V/II.77 rev. 1 Doc. 7, 17 May 1990, Original: Spanish, pp. 147, 148.

430 Memorandum, de: Dr. Abel Salazar Rodezno, Director General de Política Exterior/Dirección de Organismos Internacionales, para: Dr. José Manuel Pacas Cas-

government was eager to have a loyal representative on the Commission in order to get informed and influence the decisions of the IACHR.⁴³¹

At the 1990 General Assembly in Asunción, the Salvadoran representative rebutted the section on his country of the Commission's Annual Report. The envoy, Roberto Mejía, described the passage on El Salvador with the notorious terminology as incomplete, partial, false and generating a "distorted view" of the country. He also denounced that the acts of the FMLN were only mentioned in two paragraphs.⁴³² Likewise, the 1991 Annual Report was criticized at the General Assembly by representative Benjamín Cestoni since the document was rejected as not reflecting Salvadoran reality in regards to human rights and was once more denounced as incomplete, distorted and prepared with false data.⁴³³

On June 8, 1990, the Salvadoran government proposed that the IACHR visit El Salvador, although it was merely an oral offer mentioned in a conversation and not issued by a formal letter.⁴³⁴ Consequently, the visit did not take place. In autumn 1990, a faction within the Commission, which did not want to interfere in the ongoing peace talks, decided to postpone the elaboration of the planned Special Re-

tro, Ministro de Relaciones Exteriores, Asunto: Consideraciones al Informe sobre El Salvador presentado por la CIDH, San Salvador, May 25, 1990 (FMES files).

431 At the 1991 General Assembly, the Salvadoran delegation withdrew its candidate for the IACHR, the rightist intellectual and poet David Escobar Galindo. Apparently, as the Assembly was approaching, the Salvadorans realized that Escobar Galindo would not get the necessary votes. OEA/Ser.P/XXI.0.2, 6 abril 1992, Volumen II, Parte I, Vigésimoprimer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Sesiones Plenarias, p. 257.

432 OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, p. 168. The US representative, Luigi Einaudi, however, identified a "disheartening record of events" since the Commission's last report on El Salvador. *Ibid.*, p. 189.

433 OEA/Ser.P/XXI.0.2, 6 abril 1992, Volumen II, Parte II, Vigésimoprimer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Primera Comisión, p. 118.

434 See: Letter from David J. Padilla, to Mauricio Granillo Barrera, Permanent Representative of El Salvador, Washington, D.C., June 11, 1990 (IACHR files). See OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, p. 199.

port on El Salvador. Further, the Commission kept hoping for an on-site visit to support such a report's findings. In mid-1991, the Salvadoran government rejected the IACHR's proposal to prepare a Special Report covering the period since 1978 as inappropriate, especially in regard to the national reconciliation process. The IACHR would open wounds with such a report and would bring back many painful memories, which allegedly had been forgotten by the Salvadorans. Further, the government of El Salvador accused the Commission of not being informed about the most relevant cases.⁴³⁵ Nevertheless, as president Cristiani had invited the Commission to conduct an observation in loco,⁴³⁶ on March 21, 1991, the new Executive Secretary, Edith Márquez Rodríguez, requested to carry out an on-site investigation from April 22 to May 3, 1991.⁴³⁷ Finally, the Commission did not even conduct an on-site observation in El Salvador in the early 1990s, mainly because of the government's reluctance to permit such a visit.⁴³⁸

However, since the decision in 1990 to prepare a Special Report covering the decade of the 1980s, the IACHR has collected material supporting the document.⁴³⁹ Furthermore, the available IACHR files

435 OEA/Ser.G, CP/doc.2176/91 add. 5, 9 mayo 1991, Original: español: Observaciones de la Misión Permanente de El Salvador sobre el Informe Anual de la Comisión Interamericana de Derechos Humanos 1990-91, hechas en la sesión celebrada por la Comisión de Asuntos Jurídicos y Políticos el 25 de abril de 1991. See OEA/Ser.P/XXI.0.2, 6 abril 1992, Volumen II, Parte II, Vigésimoprimer período ordinario de sesiones, Santiago, Chile, Del 3 al 8 de junio de 1991, Primera Comisión, pp. 118-124.

436 Annual Report of the Inter-American Commission on Human Rights 1990-1991, OEA/Ser.L/V/II.79 rev. 1 Doc. 12, 22 February 1991, Original: Spanish, p. 435.

437 Letter from Edith Márquez Rodríguez, Executive Secretary, to Mauricio Granillo Barrera, Permanent Representative, Washington, D.C., March 21, 1991 (IACHR files).

438 The on-site investigation eventually should take place between April 26-29, 1993, more than a year after the signing of the peace treaty in 1992. Even on that occasion, the Salvadoran government surprisingly informed that scheduled interviews with officials in charge could not be realized due to previous engagements of the latter and proposed another postponement of the visit. Consequently, the on-site observation was cancelled. IACHR – press release, Washington, D.C., April 21, 1993. In the end, the 1994 Special Report on El Salvador could not base on another on-site investigation. See Annual Report of the IACHR 1994, OEA/Ser.L/V/II.88 Doc. 9 rev., February 17, 1995, Original: Spanish, p. 183.

439 See, for instance, Letter from Edith Márquez Rodríguez, to José Manuel Pacas Castro, Foreign Minister, Washington, D.C., November 19, 1991 (IACHR files).

indicate that after the astonishing small number of correspondences between the Commission and the Salvadoran authorities during the 1980s, the IACHR began to receive more material since 1991. This was clearly a result of the successful peace process in El Salvador, but probably also a consequence of the changed regional and international situation. Nevertheless, the new information mainly concerned issues such as the amnesty law of 1993, the death penalty, and the investigations of the UN Truth Commission, which, between 1992 and 1993, examined human rights violations and violent acts during the civil war.

In the end, two questions remain to be answered: Why did the Commission not visit the country before 1986 and why did it not publish a Special Report on El Salvador before 1994?

Generally, the changed atmosphere since the Reagan administration assumed power in January 1981 constituted a substantial aspect: the Salvadoran government might have felt more confident in continuously postponing the IACHR visit due to the strong US support. Nevertheless, it comes in handy and, in this case, is probably too fitting to blame the United States in a reflexive manner. Naturally, the strong US backing of its endangered Salvadoran ally in its troubled 'backyard', combined with Reagan's unilateralism that weakened the OAS, surely diminished the IACHR's impact. Notwithstanding, particularly in the Salvadoran case, it is necessary to review the internal situation of the IACHR as well.

Farer stated that there were many reasons, which led the Commission to not visit El Salvador until 1986. Among those was the publicity that the human rights violations in El Salvador had already drawn onto itself.⁴⁴⁰ This constitutes a crucial point: The IACHR might possibly have felt that the deplorable human rights situation in El Salvador was satisfactorily covered by international groups like Amnesty International, Americas Watch, the UN Human Rights Commission, and so forth. In addition, since the nuns' murder case, the leading media in the United States uninterruptedly reported on the state of human rights in El Salvador. In conclusion, the Commission could have argued that it would have been imprudent to get involved due to the deep engagement of the US. Also, such a commitment would have provoked criticism towards the IACHR and possibly limited its space

440 Interview with Dean Tom Farer, Denver/Colorado, August 30, 1999.

to handle other cases as well. In fact, in the Salvadoran case, the IACHR was replaced by NGOs, and in the late-1980s the UN Missions filled the vacuum the Commission had left.⁴⁴¹

It is the author's impression that both the government of El Salvador as well as the IACHR in some occasions actually pursued a Commission investigation *in loco* during the worst years between late 1980 and 1983. Notwithstanding, the willingness of both to agree on a visit did not temporarily or technically coincide. It is reprehensible but quite understandable for a government involved in human rights abuses to refuse an on-site observation by a human rights surveillance organization. In contrast, the commission either had to accept the invitation for an inquiry – and if such a scrutiny *in loco* were impossible (due to serious limitations imposed by the government), a special report without on-site observations must be prepared.

Accordingly, considering the difficult role the US played in Central America, it would have been necessary to prepare an IACHR Special Report on El Salvador, particularly in the years 1980-1983. It is helpful to understand the Commission's practice in regards to Nicaragua and Guatemala. One could conclude that the IACHR saw itself as forced to apply the same initial sympathetic patience, which prevailed in the first report on Nicaragua under Sandinista rule, also to the Salvadoran situation – in particular because, similar to the Nicaraguan case, the 1978 report on El Salvador also played a role for the change of government in 1979, which gave reason for hope at first. The Sandinistas' initial collaboration with the IACHR nourished certain sympathies among the Commissioners. In contrast, the lack of a concrete permission by the Guatemalan government in 1980-1981 did not impede the Commission to prepare a Special Report on that country – without an on-site observation.⁴⁴² So, the Salvadoran case remains an exception in the IACHR history during the 1980s.

In general, especially in the early 1980s, the IACHR was exceptionally busy with events in other countries. In 1980, the OAS Perma-

441 Illustratively, the Organization of American States could merely proclaim its support to the peace negotiations under the auspices of the UN Secretary General – obviously an expression for the organization's actual lack of influence. CP/RES. 564 (865/91): The Situation in El Salvador, OEA/Ser.G CP/RES. 564 (865/91), 13 September 1991, Original: Spanish.

442 IACHR – Report on the Situation of Human Rights in the Republic of Guatemala, OEA/Ser.L/V/II.53 doc. 21 rev.2, 13 October 1981, Original: Spanish, p. 6.

nent Council solicited the Commission to investigate the situation in Bolivia after General Luis García Meza Tejado's coup d'état against president Lidia Gueiler.⁴⁴³ In addition, the entire year 1980 witnessed high-profile preparation efforts to present and to defend the Argentine report in November before the General Assembly. Furthermore, the IACHR resolved the hostage crisis in Colombia, prepared a report on Guatemala and had to visit Nicaragua after the Sandinistas' invitation. Particularly the Argentine on-site observation and the subsequent report resulted in an impressive increase in petitions, including a wave of personal letters urging the Commission to present the Argentine situation authentically at the forthcoming General Assembly. The Commission received letters and petitions concerning the Argentine case until 1983.⁴⁴⁴ Nevertheless, the tight agenda of the IACHR in 1980 still permitted some members and lawyers to attend seminars in Mexico City, San José and Bogotá.⁴⁴⁵

The argument that in the early 1980s the Salvadoran government did not permit an acceptable investigation might be a plausible explanation for the absence of a Special Report. But nevertheless, in the years after the worst bloodshed, the Commission must have felt the obligation to write at least a similar report as it did in 1980 after the overdue on-site observation in Argentina. Unlike the Chileans and the Argentines, the Salvadoran governments could also count on a continuous faithful US support, on a favorable view from Christian Democrats in the region and even on certain sympathy from parts of the Commission itself.

The Commission waited until the Salvadoran authorities granted permission to visit the country. Certainly, the Salvadoran authorities were hardly cooperative.⁴⁴⁶ Likely, this strategy of waiting for a visit –

443 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 31.

444 In accordance, an active involvement in El Salvador probably was expected to have led to comparable amounts of petitions as in the Argentine case – at that time, the IACHR might have been eager to avoid even more work regarding a country case that was already covered by a widespread media interest and other human rights entities.

445 IACHR – Annual Report of the IACHR 1979-1980, OEA/Ser.L/V/II.50, Doc. 13 rev. 1, 2 October 1980, Original: Spanish, p. 34.

446 A. Glenn Mower, Jr. – Regional Human Rights. A Comparative Study of the West European and Inter-American Systems, New York/Westport, Connecticut/London 1991, p. 19.

as in the Argentine case – was intended to avoid giving away the important public attention instrument of the on-site investigation. In accordance, the Commission would have been able to prepare such a document after its on-site observation in 1986, but it did not publish a Special Report based on such investigation, either.

At long last, it would have been tremendously necessary for the IACHR to issue a visible Special Report on the human rights situation in El Salvador – if not between 1980 and 1984, at least until 1988-89 – because all other entities reporting on the Salvadoran human rights record, with the exception of the United Nations, could be accused of bias by the governments of El Salvador and the US. But apparently, although the Commission did not share the entire US view of the Salvadoran situation, it agreed on not accusing the lesser of ‘three evils’: it favored the center-right government in contrast to the right-wing death squads and the leftist guerrillas, though the government’s military and security forces were not completely immune against the right-wing evil. This lack of desirable alternatives to the – nominally – PDC-led government until 1989 must be taken into account, particularly in view of the Christian Democrats of the IACHR and some members’ personal attitudes towards president Duarte. The author tends to conclude that the Christian Democrat faction within the IACHR sought to avoid an open condemnation of the junta led by Duarte – although this did not prevent critical sections in the Annual Reports. This hesitance or even the sympathy with the interim-governments until 1984 later made it impossible for the Commission to work with El Salvador’s human rights community and to play a decisive role in the numerous peace talks. It can be concluded that it was difficult to work with El Salvador due to an initial reluctance on the part of the Commission, though they would have liked to play a role later on.

In contrast to other cases, where there apparently was some chance to get the permission for a visit (like the Argentine case), the situation in El Salvador was different. After several delays between 1981 and 1983, the Commission did not insist on an on-site observation and did not prepare a report, due to the permanent aversion of the Salvadoran governments to extending a formal invitation (as happened in the cases of Paraguay and Uruguay in 1978, or Guatemala in 1981). This was highly unusual for the Commission’s practice and can only be explained by the circumstances and the IACHR’s internal developments.

In conclusion, the 1994 Report was an embarrassing document that attempted to minimize the IACHR's lack of influence by summarizing the Annual Report sections and listing the few individual cases published in order to convince the reader that it actually did something during all these years.⁴⁴⁷ This report was an attempt to compensate for inaction but turned out to be proof of the Commission's lack of self-criticism, especially in regards to the Salvadoran case.

One could even tend to see the Commission's performance in the Salvadoran case as a sort of *Realpolitik* by employing a type of circumstantial relativism: apparently, the Commission internally argued that parts of the governmental forces were to be held responsible for numerous serious human rights violations, but the alternative – Marxist guerrillas or right-wing hard-liners – would be worse. The difference between Reagan's El Salvador policy and the Commission's attitude was that no one expected Reagan to be a human rights champion while the IACHR actually was a human rights organ. In this case, the Commission somewhat deviated from its mission to impartially promote human rights.

447 See: Cecilia Medina – The Role of Country Reports in the Inter-American System of Human Rights, in: Harris/Livingstone, p. 118, footnote 13; pp. 123, 125.

V. Philanthropic Endeavors or the Exploitation of an Ideal? An Evaluation of the Human Rights Policy of the Organization of American States

On the whole, as an inter-American institution, the Organization of American States has been portrayed as an important link between the US and Latin America. At times, this relationship has been a difficult one, with neither the US nor the Latin American States viewing the OAS with complete satisfaction. Often, the US blamed the organization for inefficiency, at times criticizing typical Latin American 'traditions' of more bureaucracy and diplomatic show than policies with an actual impact. In Latin America, the perception of the OAS was generally more varied. Brazil, due to its size, did not have particular interest in the OAS, even though a Brazilian became Secretary General in 1984. Mexico often used the OAS to present itself as a main speaker against US hegemony in the Americas, and Chile's performance during the human rights conflict with the IACHR demonstrated that the Pinochet regime was not indifferent toward the OAS. In general, Latin Americans shared the view that the OAS was somewhat inefficient, but above all, criticized the hegemonic dominance of the United States within the Organization. On the other hand, the OAS was also seen as a very practical institution for Latin American goals. Nevertheless, the reality illustrates that the OAS has served more to strengthen individual nations' positions and to divide Latin Americans than to contribute to a Latin American solidarity front against strong US interests. When this became clear, as impressively demonstrated during Carter's human rights battle launched using the inter-American system, the governments reacted with a protesting attitude or with a lack of interest – but this was only a temporary phenomenon or a mere outward show. In fact, the Latin American governments came to the conclusion that the OAS was too important to let it disappear. Although often not more than an institutional vacuum, it was still a symbolic link to the superpower US. All in all, the OAS was not seen as efficient but it constituted an important organization in which Latin America and the US had institutionalized, at least diplomatically, a potentially helpful relationship. Within this delicate construct, the human rights issue turned into an exceedingly controversial topic.

Generally speaking, the inter-American system of human rights has undergone quite an exceptional development with its institutional turning points – in 1948, 1959, 1965, 1969/70, 1978/79, and in 1991. These turning points were often not the result of a congruent and linear evolution or of a strategic concept, but rather, consequences of sometimes surprising or coincidental events. While the human rights topic was kept under diplomatic prudence in 1948 as well as in 1959, the actions of the emerging Inter-American Commission on Human Rights not only changed the very Commission's character, but also contributed to advancing the system itself.

During the period covered by this work, the human rights policy clearly witnessed different phases. From 1970 to 1973, the inter-American human rights system was relatively dormant. In contrast, the new brutal form of authoritarianism, first unleashed in 1973, fueled a highly passionate human rights agenda within the Commission until the early 1980s. During the 1980s, various difficulties in the region, within the OAS, and due to the Reagan administration's Cold War unilateral policies, decisively reduced the range of the inter-American human rights policy.

The principal element of the inter-American human rights system was the Inter-American Commission on Human Rights. The Commission became one of the outstanding organs for the protection of human rights in the Western hemisphere. The elevation to an OAS main organ in 1970 assured the institutional security of the IACHR. After the entry-into-force of the American Convention on Human Rights in 1979, the Commission was awarded double competence, becoming the institution responsible for OAS Members and for those States that had ratified the Convention. Maintaining the IACHR as a human rights body for both OAS Member States bound to the Charter and those parties to the Convention, was not a natural occurrence at all, since many governments in question opposed the activities of the Commission. As a result, the 1979 decision strengthened the Commission politically within the OAS. Nevertheless, the IACHR had always had an extremely small staff and a relatively tight budget to carry out the gigantic tasks of promoting and defending human rights in the entire hemisphere.¹ Its budget did grow constantly, yet it never provided

1 A comparison with the European Human Rights Commission seems to be inappropriate since that institution had decisively more financial resources, members

sufficient resources to cover the human rights reality in up to thirty Member States. Some courageous members took advantage of the right moments, which provided an opportunity to extend the Commission's competence. Together with some fortunate developments, these individuals – Commission members but also lawyers of the Secretariat, including the Executive and Assistant Executive Secretaries – were able to compensate for the lack of dedication, commitment, or even will among others at the IACHR. Without the strong position and devotion of these proactive individuals at the IACHR, the human rights issue would not have gained as much attention and the strengthening of human rights in the inter-American system would not have been advanced. As is normal for any institutional activity, it was a few personalities who made the machine of the IACHR work and thus made the difference.² Generally, the Commissioners of the OAS human rights organ did what initially nobody expected them to do: they decisively advanced not only the promotion but also the defense of human rights in the hemisphere.

In regard to economic, social and cultural rights, the Commission made a turn in the late 1970s towards a more active promotion of such rights. In spite of this shift, during the highly politicized civil wars in Central America socioeconomic rights were not specifically addressed, even though the unequal distribution of wealth and land was seen as a catalyst for these conflicts. Likewise, the Commission's work did not address a specific gender-based perspective of abuses or women's rights during the period covered by this investigation.

As in every institution, and especially in international organizations, there were several sins of omission by the Commission. However, these omissions appear perhaps graver due to their nature and because they affected the victims of human rights violations, indirectly costing human lives. Yet, it is not appropriate to proportionally compare failures and successes of the Commission. Instead, the main question remains, what would have been the human rights situation in Latin America without the IACHR? Undoubtedly, there would have been even more abuses and less hope for the victims. In fact, it is fair to state that the IACHR acted as an authentic conscience of the region,

and manpower. At the same time, it faced less serious and less widespread and systematic human rights violations as compared with the OAS Commission.

2 For the early years of the Commission, see Schreiber, p. 162.

particularly during the period between 1974 and 1980. Nevertheless, between 1980 and 1989, the Commission enjoyed its reputation in the redemocratized South American countries, while, at the same time, it could not cope with the highly politicized Central American armed conflicts. During this time, it was forced to accept its secondary role.³

On the other hand, the Organization of American States has always been blamed for being just a futile inter-American organ which neglected to advance substantial matters in the hemisphere. In this regard, the Commission is a clear exception. The IACHR contributed to improving the reputation of the OAS in the hemisphere. In this regard, it is important to distinguish between the Commission and the OAS, given the fact that the OAS was not wholeheartedly concerned with human rights during the entire period covered in this inquiry. This fact makes it even more astonishing that the IACHR could play such an exemplary role. Of course, the decisive support of the Carter administration assured financial resources and political backing, all of which were absolutely vital for the Commission's institutional development. Without the improvements and institutional reinforcement, which occurred during the Carter years, the Commission would have played an even more marginal role during the Central American conflicts of the 1980s.

In general, the human rights policy of the OAS was mostly reduced to the actions of the IACHR. The OAS General Assembly adopted resolutions on the Commission reports but did not carry out a human rights policy that went beyond diplomatic statements. Accordingly, the adoption of resolutions on IACHR documents could not be seriously interpreted as the implementation of an OAS human rights policy, but rather, as an evaluation of the Commission's work that provoked varying degrees of public interest. The rather harmless resolutions – with the exception of the 1979 resolution on Nicaragua – expressed the will of the Member States of the General Assembly, but generally, the distribution of the IACHR reports represented the true propagation of a human rights policy which was attributed to the OAS. The justification of the IACHR reports was the main task of the

3 However, the author deems it important to emphasize that this evaluation mainly refers to the prominent cases of military dictatorships (1970s) and the Central American crisis (El Salvador, Guatemala, Nicaragua, 1980s). The Commission did play an influential and sometimes helpful role in the cases of Haiti, Suriname and Chile, for instance.

Commissioners during the OAS meetings. IACHR members as well as supportive OAS delegations never tired of referring to human rights as a hemispheric ideal, and to the existent legal instruments in the inter-American system, while the accused Member States usually brought in the 'exceptional circumstances' and thus attempted to defend their questionable human rights practices.

There is no doubt that the Chilean case was a milestone for awareness of human rights in general and for the Commission's position within the inter-American system in particular. The coup in Chile of 1973 led not only to an unforeseen strengthening of the IACHR, it also resulted in a change of procedure for the OAS General Assembly concerning sensitive human rights issues. The fact that the IACHR could embarrass the Pinochet regime before the Carter administration pronounced its fierce support for human rights and the Commission demonstrates this even more. Although the actual reasons that enabled the IACHR to highlight its second Chile report at the 1976 General Assembly in Santiago have not been entirely investigated, it is clear that the position of the United States government was decisive. However, it remains difficult to determine if it was ultimately the doubtful commitment of the Ford/Kissinger administration to underscore human rights in US diplomacy, or a policy of appeasement addressed to a Congress inspired by the civil rights movement or – as this work suggests – other large-scale strategic policies directed against 'Third-World' consciousness and Latin American solidarity in particular. Most likely, the explanation rests in a combination of these interacting factors. The fundamental incentives and strategies for the new space given to human rights in US foreign policy, eventually paved the way for the OAS to discuss human rights.

During the Carter administration, human rights became a sensitive issue and the OAS Member States became even more polarized on the topic. However, it was the Latin American countries that pushed through the historical resolution of 1979 calling for Somoza to resign. In fact, this was the only exception that abandoned the historically exaggerated creed on nonintervention in domestic affairs. The important IACHR reports on Nicaragua and El Salvador of 1978 were highly critical and both advanced or contributed to a change of government. The 1978 report on Panama, in contrast, failed to have a major impact on the charges brought up by Canal Treaties opponents in the US – potentially a result of the Commissioners' reluctance to serve for US

domestic policy. In general, Carter's oath to strengthen human rights in Latin America saw some success, but the Argentine case clearly demonstrated the limits of human rights policy when confronted with vital economic and strategic interests of the US. Eventually, the US administration did help the IACHR to get into Argentina. Once there, the Commission demonstrated its potential, though it was also not entirely successful given the unfortunate delay of the on-site investigation. Ultimately, human rights advocates at the OAS lost their final battle in December 1980 when the General Assembly resolution was passed, which merely mentioned the critical report on Argentina without referring to its findings or conclusions.

It is argued here that it was one of the goals, or at least a welcome byproduct, for both the Carter and Ford administrations to preserve the OAS through substantial support of the Commission and the human rights issue. When Reagan assumed power, it quickly became evident that his administration would unilaterally prefer to favor authoritarian, anti-Communist regimes rather than to criticize their bad human rights records. As a result, the OAS seemed to lose its impact entirely. In addition to the debt crisis, Latin American disinclination to accuse one another became part of the organization's weakness when it came to human rights. Furthermore, in the context of the new regional situation shaped by the politicized Central American conflicts, the new Secretary General did not clearly support the Commission. His Argentine predecessor, surprisingly, had been able to walk the fine line of passive support despite his alleged pro-junta leanings. The Commission now dealt with Guatemala, Nicaragua, Suriname, Haiti, Paraguay and Chile. After a while, the partly understandable, partly accusable, initial sympathy with the Sandinistas was gradually replaced by a more critical and appropriate view on the part of the IACHR. On the whole, the Guatemalan case was handled in a comparatively good manner, probably also a result of modest US pressure.

In contrast, the Annual Report sections on El Salvador – though critical – did not compensate for the Commission's unexplained omission of a Special Report on the disastrous human rights situation in that country. In the Salvadoran case, some reliable sources claimed that from 1980 to 1983, 30,000 people were assassinated. The Republic of El Salvador counted approximately five million inhabitants at that time – less than the city of Buenos Aires. Media interest drew public attention to the events in El Salvador, but the Salvadoran case

clearly demonstrated the limits of publicly denouncing a violating government. Instead, it would have been necessary for the Commission as an intergovernmental institution to issue a country report on the devastating situation in El Salvador, a State bound to the Convention.

Finally, the performance of the OAS in the 1989 Panama crisis showed anew the organization's paralysis in regard to regional problems. The uneasiness and impatience on the part of the Bush administration combined with traditional Latin American unwillingness to interfere in domestic affairs of another Latin American country resulted ultimately in the US invasion. At first glance, the role of the Inter-American Commission on Human Rights seems to be a minor one. However, a second IACHR visit between May and December 1989 could have helped the Panamanian political class to ease up the situation and minimize the eagerness of the new US administration to flex its interventionist muscle in Panama. Such a possible compromise, along with authentic reforms, might have prevented a military invasion. This is admittedly pure speculation, but the Commission was eager to mediate in the Panamanian case. It was mainly the vacillating OAS that nearly provoked a unilateral military 'solution' for the problem, which was perceived as a major obstacle for the United States since the Bush administration first had sought to deal with the problem within the OAS.

The "historical" General Assembly in 1991 eventually adopted resolution 1080. This resolution reduced the nonintervention principle and prepared the ground for the diplomatic scolding, which followed for the non-democratic incidents in Haiti, Peru and Guatemala between 1991 and 1993. This was a new aspect for OAS policy because the organization finally dared to accuse single Member States. In spite of this development, strictly employed sanctions were not easily imposed, and a different handling of large and small countries continued.

In the end, four major questions remain to be answered: How is it possible to terminologically define the Latin American human rights reality, which presents a hybrid between universalism and relativism? Was the OAS human rights policy a success or a failure? What role did the US play regarding the human rights debate within the OAS? In conclusion, given the historical context of the tension between Pan Americanism and Bolivarism, one must consider the last question: Did

human rights play a part in this conceptual antagonism between Latin American solidarity and inter-American cooperation?

First, it has been suggested here that a new term be used to describe the obvious discrepancy between Latin American human rights legal tradition and the abuses that characterized large parts of the 1970s and 1980s. The expression ‘circumstantial relativism’ helps to place Latin America somewhere between Western individualistic human rights comprehension and the cultural relativism advocated in Africa and Asia. Circumstantial relativists, particularly in the period of this inquiry, rhetorically argued with the necessity of temporarily suspending basic rights in order to secure Western culture. The transitional branching off the path of universalism did not automatically lead to cultural relativism because in public circumstantial relativists argued that their practices would eventually protect human rights and of course, would also battle terrorism. Although this relativism was a particular phenomenon of Latin American dictatorships of the 1970s and 1980s, some of its features are still in practice – not only in Latin America. Given these facts, the notion ‘circumstantial relativism’ helps to categorize Latin America’s exceptional human rights reality in the 1970s and 1980s.

One of the most important questions raised here is whether the OAS policy on human rights succeeded or not. To address this, the author cites some illustrative comments on the subject made in 1990. During the General Assembly of that year, Uruguay’s Foreign Minister and former judge of the Inter-American Court of Human Rights, Héctor Gros Espiell, concluded that the ‘conscience of the Americas’ was not the IACHR but the Organization of American States. By means of its Charter and the American Convention, the two instruments of the OAS, the Court and the Commission, would only validly take decisions within the strict framework of competencies fixed by the OAS Charter, the Convention and its Statutes. He argued, “Outside of these, they have no other competence.”⁴ In response, Paul

4 OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, pp. 132-134. Gros Espiell originally said: “La conciencia de los derechos humanos en América no es la Comisión; es la Organización de los Estados Americanos a través de la Carta, de la Convención, y sus dos órganos que sólo toman válidamente decisiones en el marco estricto de las competencias que les fijan la

Spencer, the representative of Antigua and Barbuda, replied: "At a time when the name of the OAS left much to be desired, it was the Inter-American Commission on Human Rights which kept the flame of the Organization burning."⁵ It is clear that in regard to the decades of the 1970s and 1980s, Gros Espiell's position is untenable. Although his remarks were a discouraging preview for some of the Commission's future work during the 1990s, it is necessary to emphasize that had such a position become commonly accepted, especially during the 1970s, the IACHR would not have been as effective as it ultimately was.⁶ If the Commission had respectfully obeyed the nonintervention argument, no effective and substantial human rights work would have been possible within the given system.

In many ways, the OAS human rights policy during the period of this investigation was almost nonexistent – with the sole exception of the 1979 resolution of the Meeting of Consultation that called to remove Somoza.⁷ If one might speak of a human rights policy carried out by the organization as a whole, it would be at most a *laissez-faire* attitude toward the Inter-American Human Rights Commission. No step other than a condemning resolution blaming Somoza gained recognition – sanctions were not to be expected from a genuinely non-confrontational institution such as the OAS. Nevertheless, some Member States energetically supported the IACHR – specifically Venezuela, Colombia, Mexico, Costa Rica, the United States, Trinidad & Tobago, Jamaica and Barbados. However, not even all of those supporting Member States demonstrated a consistent policy. The Central American conflicts, particularly the cases of El Salvador and Nicaragua, led some traditional promoters of fundamental rights to

Carta, la Convención y sus Estatutos; fuera de eso no tienen ninguna otra competencia." *Ibid.*, p. 134.

5 OEA/Ser.P/XX.0.2, 17 mayo 1991, Volumen II, Parte II, Vigésimo período ordinario de sesiones, Asunción, Paraguay, Del 4 al 9 de junio de 1990, Primera Comisión, p. 135.

6 Accordingly, a former IACHR official states that the only reaction to the massive violations in the 1970s came from the Commission. Interviews.

7 Even the adoption of that extremely critical resolution could have been the product of an angry, Latin American reaction to the appeasing effort of the United States, which sought to support the 'moderate' forces in Nicaragua in order to promote the famous 'Somocism without Somoza'. The proposal of the United States must have revived the memory of the US invasion in the Dominican Republic in 1965, later on disguised as 'OAS operation'.

turn to a more human rights *Realpolitik*. Besides the organization's strong respect for national sovereignty, it must be recognized that during the 1970s through the mid-1980s, the OAS General Assemblies were composed of many authoritarian regimes and dictatorships, which disrespected human rights. At times, the majority of the OAS General Assembly consisted of military regimes or governments controlled by the armed forces. Unlike the typically conservative OAS, the IACHR was able to create a dynamic that persuaded old-fashioned disciples of nonintervention to consider human rights concerns while simultaneously leading representatives of repressive regimes to concede to compromises on behalf of human rights. Thus, while the Commission confronted permanent opposition and struggle, by and large it justified its very existence as necessary by carrying out the Sisyphean task of putting out fires that continued to flare up elsewhere in the region. This is – despite of all the omissions cogently mentioned in the foregoing chapters – the main achievement of the Inter-American Commission on Human Rights. Ironically, its very performance indirectly established a goal that might have been considered as secondary during the years of the worst bloodshed: to create awareness for human rights among the peoples of the hemisphere. Thanks to the IACHR, many victims and their relatives became aware of the human rights they were entitled to demand, countless victims experienced relief and hope, and some even found a way to save their lives through the remarkable endeavors of courageous and dedicated Commission members and staff lawyers. Consequently, from a historical perspective, the Commission – though neither infallible nor entirely innocent in its efforts to advance human rights – was one of the authentic consciences of the hemisphere. In contrast, the OAS as a whole did not carry out a consistent, successful human rights policy, even up to the turning point in 1991. Until then, though, the organization remained primarily a preserving sanctuary for a traditional diplomacy of eloquent noncommitment.

Furthermore, the role of the United States had a major impact on the human rights topic at the OAS. While the Ford/Kissinger administration eventually strengthened the Commission as well as the issue of human rights at the OAS, Carter's presidency safeguarded a historical shift – at least for the Commission's standing and the popularity of the item at the organization, including the entry-into-force of the Convention. Conversely, Reagan's reluctance to deal with the OAS

and the Commission caused the latter's marginalization in the larger OAS in respect to the politicized Central American conflicts.

As discussed in chapter III, the Ford and Carter administrations also pursued their human rights policy in the OAS with the goal of preserving the organization as an inter-American institution. Mainly the Kissinger/Ford administration and – with a different approach – the Reagan administration, utilized human rights for their own ends. The strategy of Kissinger/Ford was to divide Latin American States and to maintain the OAS, while Reagan used human rights as a tool to accuse the Sandinistas of abuses and simultaneously to justify atrocities against subversives carried out by friendly governments. Although Carter was also eager to reach other foreign policy goals with his emphasis on basic rights at the OAS, the existent degree of an instrumentalization was lower and a supposed exploitation of the idea of human rights cannot be confirmed.⁸

The US strategy to 'save' the Organization of American States through the human rights topic leads to the last question. In the end, in this broad historical perspective, human rights did in fact play an important role for the tense relation between Pan Americanism and its virtual counter concept, Bolivarism.

As addressed in chapter III, both the Ford/Kissinger and the Carter administration reinforced human rights thematically and institutionally at the OAS. In concrete terms, the US administrations supported discussions on human rights problems at the General Assembly and decisively strengthened the Inter-American Commission on Human Rights during the 1970s. This emphasis on human rights in the inter-American system also strategically served to give the OAS a new right to exist. The new human rights activity of the IACHR appeased the US public which had grown weary of the very existence of the OAS, as it was perceived as being highly inefficient. At the same time, the human rights issue divided Member States between those that were

8 Nevertheless, the aspect of 'moral imperialism' still constitutes a vivid argument against Carter's human rights approach in Latin America. Already in 1900, the famous writer José Enrique Rodó criticized in his memorable essay 'Ariel' the ambitions of the US American 'Caliban' (a reference to William Shakespeare's *The Tempest*) to universalize its cultural and moral ideals: "Hoy, ellos aspiran manifiestamente al primado de la cultura universal, a la dirección de ideas, y se consideran a sí mismos los forjadores de un tipo de civilización que prevalecerá." José Enrique Rodó – Ariel, Madrid 2000, p. 214.

democratic and those that were authoritarian or dictatorial rulers and often the violators of basic rights. Consequently, the human rights question split the 'Latin American' solidarity manifested in forums like SELA that had been obviously directed against US hegemony. In this context, the apparent Latin American tendency to withdraw from the OAS or to transform it into an exclusively Latin American organization constituted elements of a reanimated Bolivarism. In contrast, the OAS symbolized the very institution of the renewed Pan Americanism, now described as 'inter-American system'. The US seemingly regarded the OAS as worth maintaining because otherwise it might have lost not only potentially important connections to Latin American governments but also a helpful contact to the so-called Third World movement in general.

In sum, the use of human rights within the OAS somewhat resulted in the US-inspired Pan Americanism triumphing over Latin American Bolivarism. During the Reagan administration, traditional US unilateralism prevailed. This provoked exclusively Latin-American reactions to the incapability of the OAS with dealing with the central American conflict. However, due to difficult circumstances such as the debt predicament, these endeavors did not lead to a complete Bolivarist solution.⁹ The Reagan government did not want the OAS to disappear, but the reduced US contributions seriously weakened the organization. The decline of the organization's position in international politics was further nourished by the neglected role of the IACHR in Central America during the 1980s. While the human rights issue and the acting Commission had assured media presence of an OAS institution and the General Assemblies during the 1970s, the press rarely covered meetings and decisions of the OAS in the 1980s.

Nevertheless, during the 1980s, the Latin American trend towards Third World alternative concepts that had prevailed in the foregoing decade diminished determinedly. There was no realistic scenario of a potential confrontation between *bolivarismo* and Pan Americanism. The very maintenance of the OAS could be interpreted not as a victory of Pan Americanism but certainly, in combination with the debt crisis

9 However, Kacowicz regards the establishment of the Contadora and the Rio Support Group as a result of a revived Bolivarism. Arie M. Kacowicz – Latin America as an International Society, in: *International Politics, A Journal of Transnational Issues and Global Problems* (The Hague), Vol. 37, Number 2, June 2000, pp. 148/149.

and the subsequent loss of a sense of 'solidarity,' as an indicator for a decisive and possibly terminal defeat of Bolivarism at the end of the 20th century. The human rights topic, although not totally instrumentalized, supported the US in pursuing its goal to preserve the OAS as an institutional link to Latin America and to developing countries in order to secure its influence potential.

In summary, the Inter-American Commission on Human Rights, aside from some failures, advanced a philanthropic concept. In contrast, the larger OAS had merely a few moments in which it became a true defender of human rights. The creation of a system for the protection of human rights does not necessarily reflect well on the OAS, as the Commission was originally considered as merely decorative and later was subject to fierce opposition by many Member States. Generally speaking – despite some exceptions like the 1979 resolution on Nicaragua – the OAS did not effectively pursue a human rights policy out of a philanthropic motivation but more from an egocentric and traditionally domestic perspective of the respective Members, following the maxim of 'live and let live.' Though there were some Member States – mainly Venezuela, Costa Rica, Colombia, Mexico, the US and some Caribbean nations – that more or less battled continuously for human rights, as a whole, the organization did not implement a vigorous or consistent human rights policy.

In conclusion, the OAS human rights policy points out some remarkable successes, primarily with regard to the Commission. In general, however, the politicization and use of the issue for other interests, preponderantly by US strategic concerns, leads to the conclusion that it was not necessarily the exploitation of an ideal but at least the atrophy of a highly moralistic claim contained in the notion of human rights. This dwindling of the honorable standards of human rights has occurred in varying degrees throughout world history, wherever so-called human rights policies were carried out.

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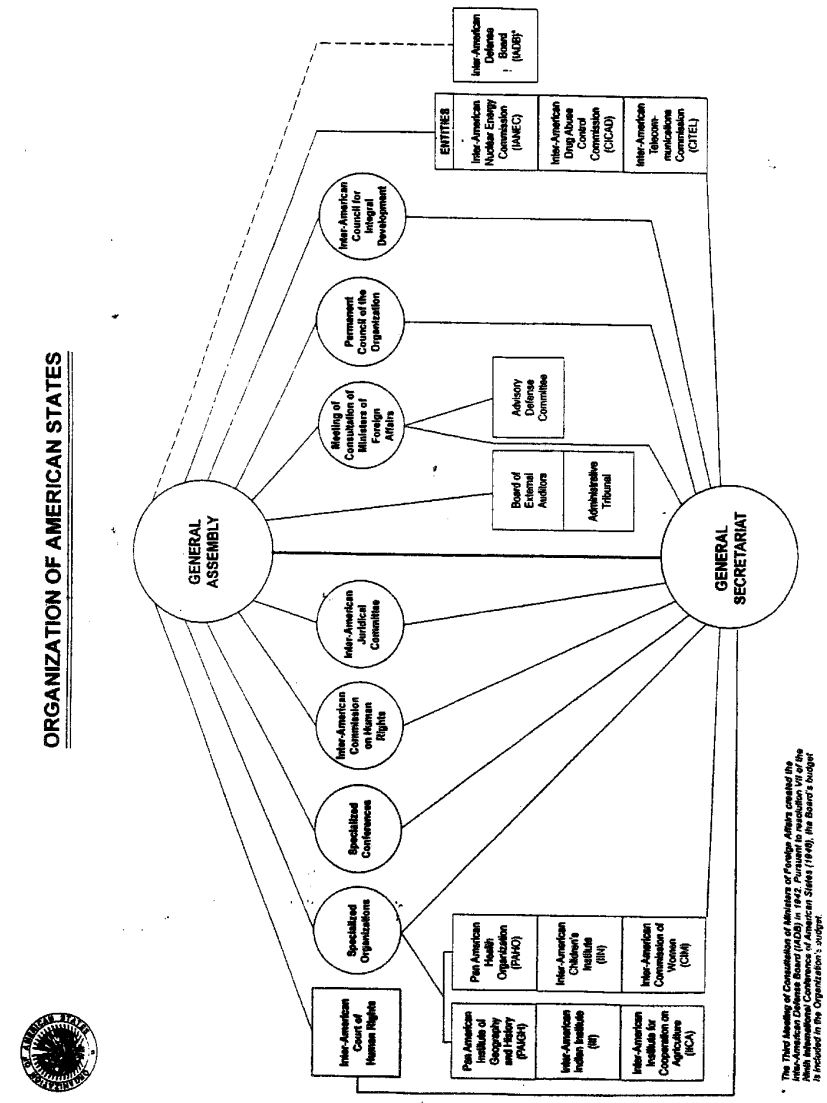
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VII. Appendices

List of abbreviations	p. 482
Organizational Structure of the OAS	p. 483
Members of the Inter-American Commission on Human Rights	p. 484
Chairs of the Inter-American Commission on Human Rights	p. 485
Development of human resources at the IACHR Secretariat 1974-1992	p. 488
Development of IACHR and OAS Budgets	p. 492
On-site observations of the IACHR	p. 494
Selected Interviews	p. 497
Photo Gallery	p. 499

List of Abbreviations

AG	Asamblea General (General Assembly)
CEPAL	Comisión Económica para América Latina (UN Economic Commission for Latin America)
CIDH	Comisión Interamericana de Derechos Humanos (IACHR)
FMES	Foreign Ministry of El Salvador
FMLN	Frente Farabundo Martí de la Liberación Nacional (Farabundo Martí National Liberation Front)
FSLN	Frente Sandinista de Liberación Nacional (Sandinista Front of National Liberation)
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IDHUCA	Instituto de Derechos Humanos de la Universidad Centroamericana (Human Rights Institute of the Central American University in San Salvador)
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OEA	Organización de los Estados Americanos (OAS)
ONU	Organización de Naciones Unidas (UNO)
OPEC	Organization of Petroleum Exporting Countries
PAU	Pan American Union
SELA	Sistema Económico Latinoamericano (Latin American Economic System)
TIAR	Tratado Interamericano de Asistencia Recíproca (Inter-American Treaty of Reciprocal Assistance)
UN	United Nations
UNO	United Nations Organization
US	United States



Members of the Inter-American Commission on Human Rights

1. Rómulo Gallegos, Venezuela	1960-1963
2. Reynaldo Galindo Pohl, El Salvador	1960-1964
3. Gonzalo Escudero, Ecuador	1960-1968
4. Angela Acuña de Chacón, Costa Rica	1960-1972
5. Durwood V. Sandifer, United States	1960-1972
6. Manuel Bianchi Gundián, Chile	1960-1976
7. Gabino Fraga, Mexico	1960-1979
8. Daniel Hugo Martins, Uruguay	1964-1968
9. Carlos A. Dunshee de Abranches, Brazil	1964-1983
10. Mario Alzamora Valdez, Peru	1968-1972
11. Justino Jiménez de Aréchaga, Uruguay	1968-1972
12. Genaro R. Carrió, Argentina	1972-1976
13. Robert F. Woodward, United States	1972-1976
14. Andrés Aguilar, Venezuela	1972-1985
15. Carlos García Bauer, Guatemala	1976-1979
16. Fernando Volio Jiménez, Costa Rica	1976-1979
17. Tom J. Farer, United States	1976-1983
18. José Joaquín Gori, Colombia	1976-1983
19. Marco Gerado Monroy Cabra, Colombia	1976-1987
20. Francisco Bertrand Galindo, El Salvador	1980-1987
21. César Sepulveda, Mexico	1980-1985
22. Luis Demetrio Tinoco Castro, Costa Rica	1980-1985
23. Bruce McColm, United States	1984-1988
24. Luis Adolfo Siles, Salinas, Bolivia	1984-1987
25. Gilda Maciel Correa Russomano, Brazil	1984-1991
26. Elsa Kelly, Argentina	1986-1989
27. Marco Tulio Bruni Celli, Venezuela	1986-1993
28. Oliver Hamlet Jackman, Barbados	1986-1993
29. John Reese Stevenson, United States	1988-1991
30. Leo Valladares Lanza, Honduras	1988-1995
31. Patrick Lipton Robinson, Jamaica	1988-1995
32. Oscar Luján Fappiano, Argentina	1990-1997
33. Michael Reisman, United States	1992-1995
34. John S. Donaldson, Trinidad & Tobago	1994-1997
35. Henry Forde, Barbados	1998-1999
36. Alvaro Tirado Mejía, Colombia	1992-1999
37. Carlos Ayala Corao, Venezuela	1996-1999
38. Jean Joseph Exumé, Haiti	1996-1999

Source: <http://www.iachr.org/Previous%20members.htm>

Chairs of the Inter-American Commission on Human Rights

1960 – 1962	<u>Rómulo Gallegos</u>	<i>Venezuelan</i>
1962 – 1968	<u>Manuel Bianchi Gundián</u>	<i>Chilean</i>
1968 – 1970	<u>Gabino Fraga</u> (July 1968 through October 1970)	<i>Mexican</i>
1970 – 1974	<u>Justino Jiménez de Aréchaga</u> (October 1970 through Sept. 1974)	<i>Uruguayan</i>
1974 – 1978	<u>Andrés Aguilar</u> (October 1974 through Oct. 1978)	<i>Venezuelan</i>
1978 – 1979	<u>Carlos A. Dunshee de Abranches</u> (Nov. 1978 through May/June 1979)	<i>Brazilian</i>
1979	<u>Andrés Aguilar</u> (May/June through December 1979, then Aguilar resigned)	<i>Venezuelan</i>
1979 – 1980	<u>Luis Demetrio Tinoco Castro</u> (since December 1979 – 1980) ¹	<i>Costa Rican</i>
1980 – 1982	<u>Tom Farer</u> (until May 1982)	<i>US citizen</i>
1982 – 1983	<u>Marco Gerardo Monroy Cabra</u> (June 1982 through June 1983)	<i>Colombian</i>
1983 – 1985	<u>César Sepúlveda</u> (June/July 1983 – June 1985)	<i>Mexican</i>
1985 – 1986	<u>Andrés Aguilar</u> (June/July 1985 – April 1986)	<i>Venezuelan</i>

¹ Referring to Art. 5 of the IACHR Regulations, the Vice Chairman took the office after the resigning of the Chairman)

1986 – 1987	<u>Luis Adolfo Siles Salinas</u> (April 1986 – March 1987)	<i>Bolivian</i>
1987 – 1988	<u>Gilda Maciel Correa Russomano</u> (March 1987 through March 1988)	<i>Brazilian</i>
1988 – 1989	<u>Marco Tulio Bruni Celli</u> (March 1988 – April 1989)	<i>Venezuelan</i>
1989 – 1990	<u>Oliver Hamlet Jackman</u> (April 1989 – May 1990)	<i>Barbadian</i>
1990 – 1991	<u>Leo Valladares Lanza</u> (May 1990 through February 1991)	<i>Honduran</i>
1991 – 1992	<u>Patrick Lipton Robinson</u> (February 1991 through Feb. 1992)	<i>Jamaican</i>
1992 – 1993	<u>Marco Tulio Bruni Celli</u> (February 1992 through March 1993)	<i>Venezuelan</i>
1993 – 1994	<u>Oscar Luján Fappiano</u> (March 1993 – 1994)	<i>Argentine</i>
1994 – 1995	<u>W. Michael Reisman</u> (1994 – February 1995)	<i>US citizen</i>
1995 – 1996	<u>Alvaro Tirado Mejía</u> (Feb. 1995 through Feb./March 1996)	<i>Colombian</i>
1996 – 1997	<u>Claudio Grossman</u> (Feb./March 1996 Feb./March 1997)	<i>Chilean</i>
1997 – 1998	<u>John S. Donaldson</u> (Feb./March 1997 – December 1998)	<i>Trinidadian</i>
1998 – 1999	<u>Carlos Ayala Corao</u> (Jan. 1998 – February 1999)	<i>Venezuelan</i>

1999 – 2000	<u>Robert K. Goldman</u> (February 1999 -2001)	<i>US citizen</i>
2001	<u>Claudio Grossman</u>	<i>Chilean</i>

Executive Secretaries of the IACHR

Luis Reque (1960 until June 1976)

Emilio Castañón Pasquel (June 1976 through December 1976)

Charles Moyer (January to September, 1977, Dr. Moyer held the post ad-interim)

Edmundo Vargas Carreño (September, 1977 through March, 1990)

David J. Padilla (March 1990 – June 1990, Dr. Padilla held the post ad-interim for several months)

Edith Márquez Rodríguez (June 1990 – Feb./March 1996)

Jorge E. Taiana (March 1996-2001)

Santiago Cantón (since 2001)

**Development of human resources at the IACHR Secretariat
1974-1992**

Prepared by Klaas Dykmann, September 2000

Year	Lawyers	Vacant Posts	Frozen Posts	Administrative Posts
1974: April 1	4	-	-	5
1974: September	3	1 Senior Specialist	-	5
1974: November	3	1 Senior Specialist	-	5
1975: January ²	3	-	1 Senior Specialist	6
1975: March 31	3	-	1 Senior Specialist	6
1975: October 1	4	-	2 Senior Specialists	5
1975: December 31	4	-	1 Senior Specialist	5
1976: April 30	4	-	1 Senior Specialist	4 (2 vacancies)
1976: October 19	5	-	-	4 (2 vacancies)
1976: December 31	5	-	-	6
1977: March 31	5	-	-	5
1977: April 30	5	-	-	5 (1 post frozen)
1977: June 30	4	1 Advisor ³	-	5
1977: September 30	5	-	-	5 (1 vacancy)
1977: December	5	-	-	5
1978: April	8	1 Principal Human Rights Specialist	-	7 (1 vacancy, 1 post frozen)
1978: July	7	2 Human Rights Specialists	-	6
1978: October	6	3 Senior Human Rights Specialists/ 1 Acting Executive	-	7 (1 vacancy)

² December 1974/March 1975.

³ In April 1977, former Executive Secretary, Castañón Pasquel, was listed as “Advisor“. Accordingly, after he had left the Secretariat, this post of an “advisor“ remained vacant.

		Secretary		
1978: December	6	2 Principal Human Rights Specialists / 1 Senior Human Rights Specialist	-	7 (1 vacancy)
1979: March	8	2 Principal Human Rights Specialists	-	8
1979: June	9	-	-	8
1979: September	8	1 Principal Human Rights Specialist / 1 Secretary	-	8
1979: December	10 (9) ⁴	-	-	8
1980: March	9 (8) ³	1 Assistant Executive Secretary	-	8
1980: June	10(11) ³	-	-	8 (1 vacancy)
1980: September	10	-	-	9 (1 frozen post)
1980: December	10	-	-	9 (1 frozen post)
1981: March	10	-	-	9 (1 vacancy)
1981: June	9	-	1 Senior Human Rights Specialist	7 (1 vacancy, 1 post frozen)
1981: September	9	-	1 Senior Human Rights Specialist	8 (1 vacancy, 1 post frozen)
1981: December	9	-	1 Senior Human Rights Specialist	10 (1 post frozen)
1982: March	8	-	1 Eliminated post ⁵	7 (1 post frozen)
1982: June	8	-	1 Eliminated post	7 (1 frozen, 1 eliminated)
1982: September	8	-	-	8
1982: December	8	-	-	7 (1 post frozen)
1983: March	9	-	-	8
1983: June	9	-	-	8

4 Between December 1979 and June 1980, one Secretary was listed under the lawyer's code, but since September 1980, he was counted under the category of administrative personnel. This explains the number in parenthesis.

5 In the salary lists it appears as "ELIMINATED POST DUE TO REORGANIZATION".

1983: September	9	-	-	10
1983: December	9	-	-	10
1984: March	9	-	-	9
1984: June	9	-	-	11
1984: September	9	-	-	11 (1 post of a clerk vacant)
1984: December	8	1 Human Rights Specialist	-	10
1985: March	7	1 Principal Human Rights Specialist/ 1 Human Rights Specialist	-	9 (1 vacancy)
1985: June	8	-	-	10 (1 post frozen)
1985: September	7	1 Assistant Executive Secretary	-	9 (1 vacancy, 1 post frozen)
1985: December	7	1 Assistant Executive Secretary	-	9 (1 vacancy, 1 post frozen)
1986: March 31	6	1 Assistant Executive Secretary	1 Senior Human Rights Specialist	9
1986: June 30	6	1 Assistant Executive Secretary	1 Senior Human Rights Specialist	9
1986: September 30	6	1 Assistant Executive Secretary	1 Senior Human Rights Specialist	9
1986: December 31	6	1 Assistant Executive Secretary	1 Senior Human Rights Specialist	8
1987: March 31	7	1 Senior Human Rights Specialist	-	8
1987: June 30	7	1 Senior Human Rights Specialist / 1 Human Rights Specialist	-	8
1987: September 30	8	1 Senior Human Rights Specialist (appointment in progress)	-	8

1987: December 31	9	-	-	8
1988: March 31	9	-	-	7 (1 vacancy)
1988: June 30	9	-	-	8
1988: September 30	9	-	-	8
1988: December 31	8	1 Human Rights Specialist: POST NOT FILLED	-	8
1989: March 31	7	-	-	6
1989: June 30	9	-	-	5
1989: September 30	8	-	-	5
1989: December 31	8	-	-	5
1990: MISSING⁶				
1991: January 31	9	-	-	6
1991: June 30	9	-	-	7
1991: September 30	9	-	-	7
1991: December 31	8	-	-	7
1992: January 31	8	-	-	8
1992: June 30	9	-	-	6
1992: September 16	10	1 Human Rights Specialist: Post NOT FILLED	-	7
1992: December 31	9	-	-	7

Sources: OAS, Personnel Register Documents from 1974-1992 (except 1990)

6 The author did not get access to the files concerning the year 1990. Apparently, those documents are missing.

Developments of the OAS and IACHR Budgets

YEAR	OAS BUDGET ⁷	IACHR BUDGET ⁷	Difference
1960	\$7,235,544	\$34,200	
1961	\$8,323,382		
1962	\$10,111,885	\$62,133	
1963	\$13,153,920	\$65,960	+\$3,827
1964	\$14,634,239	\$70,727	+\$4,767
1965	\$14,980,080	\$81,400	+\$10,673
1966	\$15,127,354	\$84,893	+\$3,493
1967	\$17,207,921	\$85,400	+\$507
1968	\$17,207,921	\$139,000	+\$53,600
1968/69	\$19,162,763	\$143,356	+\$4,356
1969/70	\$20,265,594	\$206,115	+\$62,759
1970/71	\$23,724,421	\$193,940	-\$12,175
1971/72	\$26,836,539	\$255,505	+\$61,565
1972/73	\$23,123,600	\$270,600	+\$15,095
1973/74	\$30,550,600	\$288,200	+\$17,600
1974/75	\$24,973,094	\$303,100	+\$14,900
1975/76	\$26,139,862	\$319,100	+\$16,000
1976	\$41,500,300		
1977 ⁸	\$42,480,532	\$358,500	
1978	\$48,322,000	\$891,100	+\$532,600
1979	\$48,688,000	\$800,800	-\$90,300
1980	\$51,929,000	\$858,200	+\$57,400
1981	\$52,418,000	\$937,000	+\$78,800
1982	\$63,580,100	\$1,044,000	+\$107,000
1983	\$63,580,100	\$1,010,400	-\$33,600
1984	\$63,154,200	\$1,049,000	+\$38,600
1985	\$64,980,100	\$1,119,000	+\$70,000
1986	\$64,980,100	\$1,074,200	-\$44,800
1987	\$64,980,100	\$1,071,700	-\$2,500
1988	\$66,054,500	\$1,083,700	+\$12,000
1989	\$66,054,500	\$1,168,900	+\$85,200
1990	\$60,060,100	\$1,305,500	+\$136,600
1991	\$60,060,100	\$1,367,100	+\$61,600
1992	\$65,398,200	\$1,487,600	+\$120,500
1993	\$70,956,300	\$1,617,100	+\$129,500

⁷ Approved Budget without adjustments.

⁸ In 1977, there was a transitional budget of \$63,720,800 that covered a 18 months period. The budget for the fiscal year which appears in this table represents two-thirds of that amount.

1994	\$72,945,200	\$1,734,100	+\$117,000
1995	\$83,952,900	\$1,734,800	+\$700
1996	\$84,333,500	\$2,830,600	+\$1,095,800
1997	\$84,333,500	\$2,854,600	+\$24,000
1998	\$79,990,100	\$2,846,800	-\$7,800

Sources: Reports of the Department for Program-Budget and the Department of Finance.

Prepared by Klaas Dykmann.

On-site observations of the IACHR

N°	Dates	Place	Observations
1	22-29 October 1961	Dominican Republic	First on-site visit
2	2 January 1963	Miami, Florida	Visit to Cuban refugees
3	5-9 May 1963	Dominican Republic	Second on-site visit
4	11 June 1965 – 1 June 1966	Dominican Republic	Third on-site visit
5	4-7 July 1969 8-10 July 1969	El Salvador Honduras	A special Delegation from the Commission remained in both countries until October 25, 1969
6	22 July – 2 August 1974	Chile	First on-site visit
7	29 November – 7 December 1977	Panama	First on-site visit
8	18 January 1978	El Salvador	Second on-site visit
9	16-25 August 1978	Haiti	First on-site visit
10	3-12 October 1978	Nicaragua	First on-site visit
11	20 September 1979	Argentina	First on-site visit
12	21-28 April 1980	Colombia	First on-site visit
13	6-11 October 1980	Nicaragua	Second on-site visit
14	3-6 May 1982	Nicaragua	Third on-site visit
15	7-9 May 1982	Honduras	Visit to the Miskito refugee camp in Mocorón
16	28-29 June 1982	United States - Puerto Rico	Visit to the Haitian refugee detention centers in Florida and Puerto Rico
17	5-6 August 1982	United States	Visit to the Haitian detention center in Brooklyn, New York
18	21-26 September 1982	Guatemala	First on-site visit
19	2-8 January 1983	Mexico	Visit to the Guatemalan refugee camp in Chiapas, Mexico
20	12 June 1983	Honduras - Nicaragua	Visit to the Miskito region on both countries
21	20-24 June 1983	Suriname	First on-site visit
22	6-10 May 1985	Guatemala	Second on-site visit
23	12-17 June 1985	Suriname	Second on-site visit
24	10-16 August 1986	El Salvador	Second on-site visit
25	20-23 January 1987	Haiti	Second on-site visit
26	15-19 February 1987	El Salvador	Third on-site visit

27	5-9 October 1987	Suriname	Third on-site visit
28	3-7 January 1988	French Guyana	On-site visit to the Surinamese refugee camps
29	25-28 January 1988	Guatemala	Third on-site visit
30	20-22 January 1988	Nicaragua	Fourth on-site visit
31	2-30 April 1988	Nicaragua	Review of the case files of former National Guardsman (1,834 cases)
32	29 August - 2 September 1988	Haiti	Third on-site visit
33	13-16 December 1988	Suriname	Fourth on-site visit
34	27 February – 3 March 1989	Panama	Second on-site visit
35	6-12 May 1989	Peru	First on-site visit
36	29 January – 3 February 1990	Guatemala	Fourth on-site visit
37	7-9 February 1990	Paraguay	First on-site visit
38	17-20 April 1990	Haiti	Fourth on-site visit
39	9-13 July 1990	Panama	Third on-site visit
40	14-16 November 1990	Haiti	Fifth on-site visit
41	3-7 December 1990	Colombia	On-site visit (preliminary)
42	12-14 August 1991	Dominican Republic	Fourth on-site visit
43	28 October – 1 November 1991	Peru	Second on-site visit
44	4-6 December 1991	Haiti	Sixth on-site visit
45	19-21 April 1992	Peru	Third on-site visit
46	27-30 April 1992	Nicaragua	Fifth on-site visit
47	4-8 May 1992	Colombia	Second on-site visit
48	11-12 May 1992	Peru	Fourth on-site visit
49	2-6 November 1992	Guatemala	Fifth on-site visit
50	17-21 May 1993	Peru	Fifth on-site visit
51	23-27 August 1993	Haiti	Seventh on-site visit
52	6-10 September 1993	Guatemala	Sixth on-site visit
53	9-10 March 1994	Guatemala	Seventh on-site visit to Guatemala to verify the situation of the "Communities of Peoples in Resistance" (CPR)"
54	16-20 May 94	Haiti	Eighth on-site visit
55	22-27 May 94	Bahamas	First on-site visit
56	24-27 October 1994	Haiti	Novena on-site visit
57	7-11 November 1994	Ecuador	First on-site visit

58	1-5 December 1994	Guatemala	Eighth on-site visit
59	7 December 1994	Jamaica	First on-site visit
60	20-23 March 1995	Haiti	Tenth on-site visit
61	3-5 May 1995	United States	On-site visit to the Lompoc Federal Penitentiary, to verify the detention conditions of the “Mariel Cubans”
62	30 de May 1995	United States	On-site visit to Leavenworth Penitentiary, Kansas
63	5-10 July 1995	Guatemala	Ninth on-site visit
64	4-8 December 1995	Brazil	First on-site visit
65	26 April 1996	United States	On-site visit to Allenwood, Pennsylvania, to verify prison conditions of the “Mariel Cubans”
66	12-18 May 1996	Venezuela	On-site visit to verify prison conditions
67	15-24 July 1996	Mexico	On-site visit
68	9-10 December 1996	United States	On-site visit to Marksville and Amite, Louisiana to verify prison conditions of the “Mariel Cubans”
69	28 April – 2 May 1997	Bolivia	On-site visit
70	16-20 June 1997	Dominican Republic	Fifth on-site visit
71	20-22 October 1997	Canada	On-site visit to verify the situation of refugees
72	1-8 December 1997	Colombia	Third on-site visit
73	7-9 July 1998	United States	On-site visit to Los Angeles and San Diego, California to study the situation of migrant workers and the families
74	6-11 August 1998	Guatemala	Tenth on-site visit
75	9-13 November 1998	Peru	Sixth on-site visit
76	7-9 July 1999	United States	On-site visit to El Paso, Texas
77	28-30 July 1999	Paraguay	Second on-site visit

Source: <http://www.iachr.org/visitas.eng.htm>

Selected Interviews (July 1999-October 2000)

Tom J. Farer, Denver Colorado (USA), August 30, 1999.
*Member of the Inter-American Commission on Human Rights (1976-1983)
 and its Chairman (1980-1982)*

José Miguel Vivanco, Washington, D.C. (USA), August 23, 1999.
Executive Director of Human Rights Watch, Americas Division

Richard T. McCormack. McLean/Virginia (USA), January 6, 2000.
Former OAS Permanent Representative of the United States of America

David J. Padilla, Washington, D.C. (USA), July 20, 1999.
Former Assistant Executive Secretary of the IACHR

Luigi Einaudi, Washington, D.C. (USA), November 18, 1999.
*Assistant Secretary General of the Organization of American States, US
 Permanent Representative to the OAS, 1989-1993*

Robert K. Goldman, Washington, D.C. (USA), September 9, 1999.
Former Member and Chairman of the IACHR

Edmundo Vargas Carreño, San José (Costa Rica), November 24/25, 1999.
Former Executive Secretary of the IACHR, 1977-1990

Mario Calderón, Santiago de Chile (Chile), June 2000.
Former Human Rights Advisor at the Ministry of Foreign Relations, Chile

Adolfo Pérez Esquivel, Buenos Aires (Argentina), June 16, 2000.
*Founder of human rights organization SERPAJ, Nobel Peace Prize Winner
 1980*

Roberto Alvarez, Washington, D.C. (USA), November 17, 1999.
Former Lawyer of the IACHR Secretariat

Domingo E. Acevedo, Washington, D.C. (USA), December 15, 1999.
Former Assistant Executive Secretary of the IACHR

Claudio Grossman, Washington, D.C. (USA), September 29, 1999.
Former Member and Chairman of the IACHR

Pedro Daza, Santiago de Chile (Chile), June 8, 2000.
Former Permanent Representative of Chile to the OAS; 1979-1984

Bruce McColm, Alexandria/Virginia (USA), September 3, 1999.
Former Member of the IACHR

Robert E. White, Washington, D.C. (USA), September 24, 1999.
Former US Ambassador to Paraguay and El Salvador, former OAS Representative

Alejandro Orfila, San Diego (CA), January 2000.
Secretary General of the Organization of American States, 1975-1984.

Francisco Bertrand Galindo, San Salvador (El Salvador), October 27, 2000.
Former Member of the IACHR

William D. Rogers, Washington, D.C. (USA), November 9, 1999.
Assistant Secretary of State for Inter-American Affairs, 1974-1977

Oscar A. Montes, Buenos Aires (Argentina), May 17, 2000.
Admiral, Minister of Foreign Relations of Argentina, 1976-1977

Raúl Quijano, Buenos Aires (Argentina), May 18, 2000.
Permanent Representative of Argentina to the OAS, 1969-1975 and 1979-1984

Hebe de Bonafini, Buenos Aires (Argentina), April 26, 2000.
President of the human rights NGO Madres de Plaza de Mayo

Photo Gallery



Photo 1: Quinta Reunion de Ministros de Relaciones Exteriores (Santiago, Chile 1959). With the Permission of the General Secretariat of the Organization of American States.

Source: OAS/IACHR.



Photo 2: Primera Reunion de la Comisión Interamericana de Derechos Humanos (1960). With the Permission of the General Secretariat of the Organization of American States.

Source: OAS/IACHR.

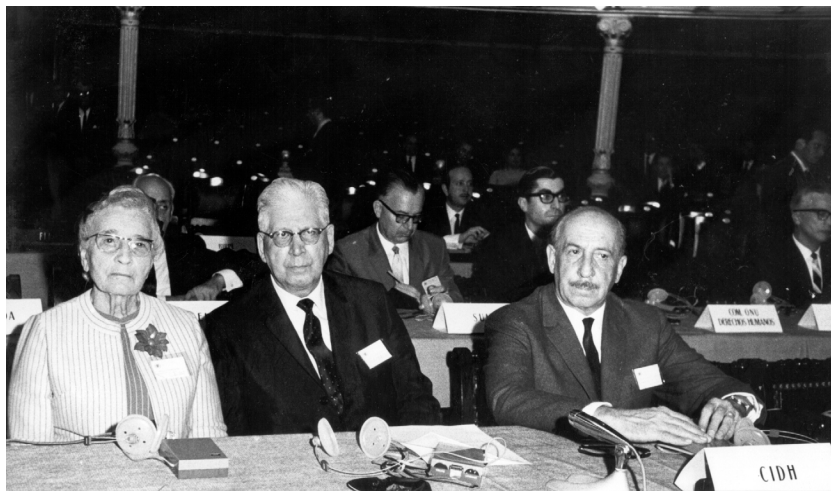


Photo 3: Angela Acuña, Gabino Fraga y Justino Jimenez de Arechaga. Delegados de la Comisión Interamericana de Derechos Humanos en la Conferencia Especializada en la cual se firmó la Convención Americana sobre Derechos Humanos. Teatro Nacional, San José, Costa Rica (noviembre 1969). With the Permission of the General Secretariat of the Organization of American States.
Source: OAS/IACHR



Photo 4: Con el deposito del 11° instrumento de ratificación, por parte de Grenada entra en Vigor La Convención Americana sobre Derechos Humanos (19 de julio de 1978). With the Permission of the General Secretariat of the Organization of American States.
Source: OAS/IACHR.



Photo 5: Argentina deposita su instrumento de ratificación a la Convención Americana sobre Derechos Humanos (septiembre 5, 1984). With the Permission of the General Secretariat of the Organization of American States.
Source: OAS/IACHR.



Photo 6: 25° aniversario de la Comisión Interamericana de Derechos Humanos (septiembre 1984). With the Permission of the General Secretariat of the Organization of American States.
Source: OAS/IACHR.



Photo 7: Miembros y personal de la secretaria ejecutiva de la CIDH. 25º aniversario de la comisión (septiembre 1984). With the Permission of the General Secretariat of the Organization of American States.
Source: OAS/IACHR.